

The Farmer in Chief: Obama’s Local Food Legacy

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ABSTRACT

As criticism over America’s food policy has grown,¹ many scholars have offered suggestions for reform.² Complementing this

¹ Recently, Joseph Stiglitz, a professor of economics at Columbia University and a Nobel laureate, pointed out that American food policy is “crazy,” suggesting ample room for reform. See Joseph E. Stiglitz, *Our Crazy Food Policy*, N.Y. TIMES, Nov. 17, 2013, at SR4; Joseph E. Stiglitz, *The Insanity of Our Food Policy*, N.Y. TIMES, Nov. 16, 2013, http://opinionator.blogs.nytimes.com/2013/11/16/the-insanity-of-our-food-policy/?_php=true&_type=blogs&_r=0.

² See generally William S. Eubanks II, *The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System*, 37 VT. L. REV. 957 (2013) [hereinafter *The Future of Federal Farm Policy*] (describing five areas of farm bill reform worthy of congressional consideration); Emily M. Broad Leib, *All (Food) Politics Is Local: Increasing Food Access Through Local Government Action*, 7 HARV. L. & POL’Y REV. 321 (2013) [hereinafter *All (Food) Politics*]; Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 J. FOOD L. & POL’Y 17 (2013) [hereinafter *The Forgotten Half*] (describing various ways to increase the production of specialty crops as a way to reform the industrial food system); Allison Condra, *Food Sovereignty in the United States: Supporting Local*

body of scholarship, this Article identifies and assesses recent changes to federal laws and policies as they affect “local food” and describes local farmers’ awareness of and reaction to these changes.³ These changes and the farmers’ responses show greater recognition of local food by President Barack Obama and the federal government in three ways: increased inclusion of local food in legislation and policy discussions; increased awareness of the benefits of local food production and consumption; and increased consumer access to local food. But the farmers’ responses also highlight areas where improvements can be made. Specifically, farmers need to be better informed about funding opportunities, and funding opportunities need to be available to a greater number of farmers.

INTRODUCTION

It might seem odd to suggest that a president can have a food legacy, particularly a *local* food legacy. After all, the president sets the agenda for seemingly more important matters such as economic and foreign policy, not the dinner menu. The federal government, however, has been influencing Americans’ diet through its agricultural policy for some time.⁴ Over the last thirty years, these

and Regional Food Systems, 8 J. FOOD L. & POL’Y 281 (2012) (discussing ways state and federal governments support local and regional agriculture); Jason J. Czarnecki, *Food, Law & the Environment: Informational and Structural Changes for a Sustainable Food System*, 31 UTAH ENVTL. L. REV. 263 (2011) (evaluating information and structural changes for a more sustainable food model); Mary Jane Angelo, *Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in a Changing Global Environment*, 17 GEO. MASON L. REV. 593 (2010) (exploring the regulatory and incentive-based federal programs affecting which crops are grown and the manner in which they are grown); Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 937 (2010) (arguing that “sustainable production and delivery of healthy food” should be the central goals of agricultural law and its supporting policies).

³ While I recognize the important role that state and local governments play in assisting local farmers and local food production, a discussion of those efforts is beyond the scope of this Article. For a discussion on the importance of state and local food policy to the local food movement, see Neil D. Hamilton, *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407 (2002).

⁴ See Kelly D. Brownell, *Should Government Tell You What to Eat?*, YALE ALUMNI MAG., July-Aug. 2007, at 30, available at <http://www.yaleruddcenter.org/resources/upload/docs/what/policy/YaleAlumniMag.pdf> (describing the government’s role in transforming the country from one of undernutrition to overnutrition); see also Lindsay F. Wiley, *The U.S. Department of Agriculture as a Public Health Agency? A “Health in All Policies” Case Study*, 9 J. FOOD L. & POL’Y 61, 62 (2013) (“The U.S. Department of Agriculture (USDA) plays an enormously important role in shaping our nation’s food system—the food that’s available in stores, restaurants, schools, workplaces, and our homes; how it is produced and sold; how it is consumed and by whom.”).

policies have promoted the production of commodity crops like corn and wheat, which are produced in massive quantities, over the production of specialty crops grown on a smaller scale.⁵ Commodity crop corn is not the corn on the cob found at a summer barbecue. Rather, the corn grown at an industrialized farm is typically refined, modified, and changed into cornstarch, corn oil, and corn syrup, products that have been linked to a myriad of health problems including obesity, heart disease, and diabetes.⁶

In part because of these growing health concerns, scholars have advocated for the federal government, including the president, to shift focus away from agribusiness toward farming practices done in a smaller, sustainable manner.⁷ This would include the production and consumption of local food.⁸ Federal support for local food policy could be exhibited by providing financial and programmatic support to local entities,⁹ expanding the scope of federal food policy discussions,¹⁰ and promoting the production and consumption of local food through federal exemptions and programs.¹¹

Food advocates have also sought to engage national leaders, including the president, in food policy discussions. One such example is Michael Pollan, author of *The New York Times* bestsellers *The Omnivore's Dilemma: A Natural History of Four Meals* and *In*

⁵ See Angelo, *supra* note 2, at 597–98.

⁶ See *id.* at 596; Brownell, *supra* note 4.

⁷ See generally William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 297–310 (2009) [hereinafter *A Rotten System*] (advocating for subsidizing sustainable agriculture as a way to address public health concerns). William Eubanks has also advocated for sustainable agriculture practices for environmental reasons. See William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENVTL. L. REP. 10493 (2009) [hereinafter *Sustainable Farm Bill*]. Susan Schneider advocates for sustainable agriculture for primarily health but also environmental and economic reasons. See Schneider, *supra* note 2.

⁸ *A Rotten System*, *supra* note 7, at 295–96 (noting that to produce food differently “[i]t will necessarily have to be done more locally, at a smaller and finer scale. . . .”); Schneider, *supra* note 2, at 954 (explaining that a “new food-focused agriculture should encourage a diverse and regionally based agriculture that is able to provide local food to customers and retail clients”).

⁹ See *All (Food) Politics*, *supra* note 2, at 329–39.

¹⁰ See Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America's Food System*, 6 J. FOOD L. & POL'Y 151, 154 (2010).

¹¹ Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of “Local Foods,”* 33 HAMLIN J. PUB. L. & POL'Y 49, 100 (2011) (describing exemptions for small farms in recent federal legislation).

Defense of Food: An Eater's Manifesto.¹² One month before the 2008 presidential election, *The New York Times Magazine* published Pollan's thirteen-and-a-half page letter to the yet-to-be-elected "Farmer in Chief."¹³ In this letter, Pollan points out to the future president that "among the issues that will occupy much of your time in the coming years is one you barely mentioned during the campaign: food."¹⁴ He warns that in order to address pressing issues like health care, energy independence, and climate change, reforming "the entire food system [must be] one of the highest priorities of [the president's] administration."¹⁵ Pollan recommends, among other things, that the future president appoint a White House Farmer to "tear out five prime south-facing acres of the White House lawn and plant in their place an organic fruit and vegetable garden."¹⁶

Coincidentally or not, five years later, the White House has a garden; but is there more to President Obama's food legacy than a plot of land on the South Lawn? This Article seeks to answer this question in the context of the president's *local* food legacy.¹⁷ Specifically, this Article analyzes enacted and proposed federal legislation and agency initiatives, as well as executive decisions from 2008 to 2013 related to local food policy. This Article also evaluates the responses of fifty-six local farmers to a detailed survey about these laws, initiatives, and decisions.

The Article begins by examining the local food movement as part of the larger food movement. Part I describes how local food is defined and the growth of the local food movement. A description of

¹² *The Omnivore's Dilemma*, published in 2006, and *In Defense of Food*, published in 2008, both received wide acclaim. *The Omnivore's Dilemma* was named one of *The New York Times Book Review's* Ten Best Books of the Year, while *In Defense of Food* claimed *The New York Times's* top bestseller spot. See generally MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006) [hereinafter *OMNIVORE'S DILEMMA*]; MICHAEL POLLAN, *IN DEFENSE OF FOOD: AN EATER'S MANIFESTO* (2008) [hereinafter *IN DEFENSE OF FOOD*].

¹³ Michael Pollan, *Farmer in Chief*, N.Y. TIMES MAG. (Oct. 12, 2008), <http://michaelpollan.com/articles-archive/farmer-in-chief/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ I recognize that there are many individuals within the legislature and federal agencies doing the heavy lifting when it comes to food policy. But at the end of the day, it is the president who signs bills into law, appoints members to his administrative team, and selects the leaders of federal agencies. I am not the first to evaluate the effectiveness of a presidential agenda using this assumption. See generally Rona Kaufman Kitchen, *Off-Balance: Obama and the Work-Family Agenda*, 16 EMP. RTS. & EMP. POL'Y J. 211 (2012) (discussing the effectiveness of President Obama's work-family agenda).

the local farmer survey is also included. Next, Part II provides a brief description of President Obama's position on local food policies during the 2008 and 2012 election seasons—as demonstrated in campaign speeches, interviews, and publications—and compares these positions to those of his opponents. Part III then analyzes the acts, initiatives, and decisions during Obama's presidency that have directly and indirectly promoted local food production and consumption. In particular, this Part discusses, in tandem with the survey responses of local farmers, the enactment of the Healthy, Hunger-Free Kids Act, the Food Safety and Modernization Act, the proposed 2013 Farm Bill, the selection of Tom Vilsack as Secretary of the United States Department of Agriculture (USDA), and several USDA grants and initiatives including the *Know Your Farmer, Know Your Food* campaign. Lastly, this Article touches on the establishment of the White House Rural Council, the Healthy Food Financing Initiative, and First Lady Michelle Obama's *Let's Move!* campaign. The Article ultimately finds that President Obama has been successful in including local food in federal legislation and policy discussions involving nutrition, food safety, and economic development, increasing awareness of the benefits of local food production and consumption, and increasing consumer access to local food.

Local food is no longer confined to discussions on agricultural policy. President Obama signed two pieces of legislation into law—one focused on nutrition and the other on food safety—that mention and describe “local food.” The secretary of the USDA boasts about and credits his agency with the increased demand for local food. The 2014 Farm Bill includes a provision to promote “local food.” Other agencies, in addition to the USDA, are working collaboratively to increase access to “local food,” and more is being done to make information about local food programs available to the public. And, with the establishment of the White House garden, the First Family is able to eat locally, too. Yet, the nation's agricultural policies and accompanying landscape remain relatively unchanged, leaving local farmers frustrated by the lack of meaningful changes at the federal level. Many farmers were not aware of the legislation or policies that affect their businesses and were unfamiliar with grants available for their use. For those farmers familiar with federal farm legislation and policies, there is a sense of interference rather than progress—a feeling that the federal government is still out of touch with the local

farmer's needs and wants, suggesting further room and need for reform.

I

WHAT IS LOCAL FOOD POLICY?

A. Defining Local Food

“Food policy” encompasses the “set of laws and regulations that inform how, why, and when food is produced, transported, distributed, and consumed.”¹⁸ Local food policy is, therefore, those laws and regulations governing food that is *locally* produced, transported, distributed, and consumed. The local food movement is part of the larger food movement, which supports laws and regulations for food that is locally produced, transported, distributed, and consumed.¹⁹ Scholars describe the local food movement as a “grassroots movement comprised of people who are interested, for various reasons, in obtaining food grown or produced where they live.”²⁰

Despite the seemingly straightforward definition of food policy and the food movement, local food does not have a single definition.²¹ Instead, qualities or characteristics are used to define local food. These characteristics—such as geography, market outlets, consumer perceptions, and farming operations—underlying the local food

¹⁸ HARVARD LAW SCH. FOOD LAW AND POL'Y CLINIC, GOOD LAWS, GOOD FOOD: PUTTING STATE FOOD POLICY TO WORK FOR OUR COMMUNITIES 1 (2012), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2012/12/FINAL-full-state-toolkit.pdf>.

¹⁹ The local food movement is one of several interrelated movements encompassing the “sustainable food movement,” including the organic movement, the slow food movement, and the “new American” food movement. Stephanie Tai, *The Rise of U.S. Food Sustainability Litigation*, 85 S. CAL. L. REV. 1069, 1072 (2012); see also Czarnecki, *supra* note 2, at 265–66 (noting the different non-industrial agricultural models including “civic agriculture,” “alternative agriculture,” and “new agriculture”).

²⁰ Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL'Y 45, 46–47 (2008); accord Johnson & Endres, *supra* note 11, at 56 (describing the local food movement as “a purposeful effort by consumers to buy food products from farmers and producers in the cities, regions, and states in which they live”).

²¹ See Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 DRAKE J. AGRIC. L. 9, 10 (2010) (noting that “‘local food’ does not have one set definition, legal or otherwise. Local food currently has a variety of meanings, depending on the context and the party defining it. It is an evolving and often debated term.”).

movement preserve our natural environment, improve human health, and promote economic development.²²

The most intuitive definition of local food is based on the geographic proximity of the farmer to the consumer and is measured in terms of “food miles,” or the distance food travels from farm to plate. However, the number of “food miles” used to determine local food varies.²³ Some consider food to be local if the food is produced within one hundred miles from where it is consumed.²⁴ The 2008 Farm Bill defines local food as food produced within four hundred miles.²⁵ Still, other sources consider food to be local if it is produced and consumed within the same state or region.²⁶

Regardless of the distance, one argument for eating local food is that food produced locally has fewer food miles and therefore has a smaller carbon footprint. Advocates like the Natural Resources Defense Council argue that locally produced food is the best choice for minimizing global warming and other pollutants.²⁷

In addition to benefiting environmental health, eating local foods can benefit human health. “[C]ertain foods—fresh fruits and vegetables especially—can lose nutritional value as supply chains grow longer, and [] preservation methods like freezing and blanching

²² RENÉE JOHNSON ET AL., CONG. RESEARCH SERV., THE ROLE OF LOCAL FOOD SYSTEMS IN U.S. FARM POLICY 3–4 (2012), available at http://fyi.uwex.edu/dane/foodsystem/files/2012/01/CRS_LocalFood_FarmPolicy12Jan20-asp_x_.pdf.

²³ See STEVE MARTINEZ ET AL., U.S. DEP’T OF AGRIC., LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES iii (2010), available at http://www.ers.usda.gov/media/122868/err97_1_.pdf; see generally NATURAL RES. DEF. COUNCIL, FOOD MILES: HOW FAR YOUR FOOD TRAVELS HAS SERIOUS CONSEQUENCES FOR YOUR HEALTH AND THE CLIMATE (2007), available at <http://food-hub.org/files/resources/Food%20Miles.pdf> [hereinafter NRDC].

²⁴ ALISA SMITH & J.B. MACKINNON, THE 100-MILE DIET: A YEAR OF LOCAL EATING 10 (2007).

²⁵ Food, Conservation, and Energy Act of 2008, 7 U.S.C. § 1932(g)(9)(A)(i)(I) (2012). An amendment directs the Secretary of Agriculture to “make or guarantee loans to individuals, cooperatives, cooperative organizations, businesses, and other entities to establish and facilitate enterprises that process, distribute, aggregate, store, and market locally or regionally produced agricultural food products to support community development and farm and ranch income.” *Id.* § 1932(g)(9)(B)(i). It defines locally or regionally produced agricultural food products as:

[A]ny agricultural food product that is raised, produced, and distributed in (I) the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or (II) the State in which the product is produced.

Id. § 1932(g)(9)(A)(i).

²⁶ See Braaten & Coit, *supra* note 21, at 11 (for other mileage definitions of local).

²⁷ See NRDC, *supra* note 23.

can compound this nutrient loss.”²⁸ Promoting the consumption of fresh produce instead of processed or refined foods has been a centerpiece of First Lady Michelle Obama's *Let's Move!* campaign, which focuses on preventing childhood obesity.²⁹ But in order to eat fresh produce, individuals must have access to it. Limited access to fresh produce has been identified as contributing to the growing problem of childhood obesity.³⁰

Market outlets for local farmers is both another way to define local foods and increasing these outlets can improve access to local foods. In general, local food can be found at two types of market outlets: direct-to-consumer markets and intermediate markets.³¹ Direct-to-consumer markets include roadside stands, on-farm stores, farmers markets, and community supported agriculture (CSAs).³² Intermediate markets could be grocers, restaurants, or food hubs.³³

In addition to improving access to fresh produce, market outlets support the local economies in which they are situated. Purchasing and consuming foods from a local farmer, or from a retail establishment that sells local produce, can benefit the local economy through reinvestment and recirculation of the local dollar.³⁴ Recognizing that “a community-based food system approach may be the best path toward economic recovery and resilience because it builds health, wealth, connection, and capacity in the local economy and community,”³⁵ many states have explored expanding local food production. For example, an Illinois study reported that supporting local food could “trigger \$20 to \$30 billion in new economic activity

²⁸ Johnson & Endres, *supra* note 11, at 90.

²⁹ See generally WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY, SOLVING THE PROBLEM OF CHILDHOOD OBESITY WITHIN A GENERATION 49–63 (2010), available at http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf.

³⁰ *Id.* at 49–52.

³¹ JOHNSON ET AL., *supra* note 22, at 5.

³² *Id.*

³³ *Id.*

³⁴ Cf. Matthew V. Bradshaw, *The Rise of Urban Agriculture: A Cautionary Tale—No Rules, Big Problems*, 4 WM. & MARY BUS. L. REV. 241 (2013); Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. LITIG. 203 (2010) (discussing the benefits of an urban agricultural system).

³⁵ ERIC S. BENDFELDT ET AL., A COMMUNITY-BASED FOOD SYSTEM: BUILDING HEALTH, WEALTH, CONNECTION, AND CAPACITY AS THE FOUNDATION OF OUR ECONOMIC FUTURE 8 (2011), available at <http://pubs.ext.vt.edu/3306/3306-9029/3306-9029-PDF.pdf>.

each year.”³⁶ Noting the increase in farmers markets by 635% over the past ten years, The Food Bank of North Alabama recommended the use of local foods in Alabama as an economic strategy.³⁷ A study conducted in northeast Ohio reported that the region’s businesses spent 25% of their food dollars on local farms and businesses; the money could create 27,664 new jobs, increase economic output by \$4.2 billion, and generate \$126 million in local and state taxes.³⁸

Officials at the state and local levels, as well as the federal level, see local foods as a long-term driver of job and wealth creation. One report of the USDA’s Economic Research Service (ERS) found that in 2008, “produce and nut growers selling into local and regional markets generate thirteen full time operator jobs per \$1 million in revenue earned, for a total of 61,000 jobs.”³⁹ Scholars, too, have described how local food production can revitalize local economies, both rural and urban.⁴⁰

The type of farming operation a farmer manages is yet another way to define local food. Farmers selling to direct markets usually have diversified farms that grow specialty crops, meaning they grow more than one kind of fruit or vegetable.⁴¹ This is in contrast to industrialized farming practices of cropping monoculture commodity crops, such as wheat, corn, and soybeans.⁴² Farmers who sell to direct markets tend to have smaller farms, both in terms of acreage and in

³⁶ Press Release, Ill. Dep’t of Agric., Local Food System Has \$30B Economic Stimulus Potential for Illinois Economy (Mar. 4, 2009), available at <http://www.agr.state.il.us/newsrels/r0304091.html>.

³⁷ FOOD BANK OF N. ALA., LOCAL FOODS: POTENTIAL TO BUILD HEALTH & WEALTH IN ALABAMA, available at <http://www.crcworks.org/huntsville.pdf>.

³⁸ *Executive Summary* to BRAD MASI ET AL., THE 25% SHIFT: THE BENEFITS OF FOOD LOCALIZATION FOR NORTHEAST OHIO & HOW TO REALIZE THEM (2010), available at <http://www.neofoodweb.org/sites/default/files/resources/the25shift-foodlocalizationintheNEOregion.pdf>.

³⁹ U.S. DEP’T OF AGRIC., KNOW YOUR FARMER, KNOW YOUR FOOD COMPASS 78, available at <http://www.usda.gov/documents/KYFCompass.pdf> [hereinafter KNOW YOUR FARMER].

⁴⁰ See generally Bradshaw, *supra* note 34; Peters, *supra* note 34.

⁴¹ Specialty crops are defined as “fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture).” *Specialty Crop Block Grant Program—Farm Bill*, U.S. DEP’T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&rightNav1=SpecialtyCropBlockGrant0Program&topNav=&leftNav=CommodityAreas&page=SCBGP&resultType> (select “What are Specialty Crops?”) (last visited Aug. 3, 2014).

⁴² See *The Future of Federal Farm Policy*, *supra* note 2, at 958–59.

terms of gross income.⁴³ The USDA National Commission on Small Farms defines a small farm as a family farm with less than \$250,000 total monetary value of food per year.⁴⁴ In contrast, the USDA's Agricultural Marketing Service (AMS) defines small farms as those farms with gross farm sales less than \$50,000, while medium-sized farms gross between \$50,000 and \$249,999.⁴⁵ Large farms are those farms with gross farm sales of \$250,000 or more.⁴⁶ According to the AMS definitions, small food farms represent 81% of all local food farms, medium-sized farms represent 14%, and large farms account for approximately 5%.⁴⁷

B. Local Farmer Survey

With this understanding of the characteristics of local food, I devised a study to evaluate the perspectives of local farmers on recent changes to federal laws and policies that could affect local farmers.⁴⁸ The local farmers included in my study were those with small farms, in terms of acreage, who sell specialty crops, animal products, or a combination thereof, primarily to direct market outlets.⁴⁹ The section

⁴³ See generally SMALL FARM TODAY MAG., <http://www.smallfarmtoday.com> (last visited Aug. 25, 2014) (defining a "small farm as a farm that is 179 acres or less in size, or earns \$50,000 or less in gross income per year"); see also BUREAU OF THE CENSUS, AGRICULTURAL BRIEF: LARGE FARMS ARE THRIVING IN THE UNITED STATES 2 (1996), available at http://www.agcensus.usda.gov/Publications/1992/outlying/ab_9601.pdf (noting that industrialized farms average approximately 1542 acres in size while small farms average approximately 271 acres in size).

⁴⁴ ROBERT A. HOPPE ET AL., U.S. DEP'T OF AGRIC., SMALL FARMS IN THE UNITED STATES: PERSISTENCE UNDER PRESSURE 1 (2010), available at http://www.ers.usda.gov/media/147007/eib63_1_pdf (defining small farms as those with annual sales less than \$250,000); see also U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE: SMALL FARMS, available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/small_farm.pdf (defining small farms as farms with \$250,000 or less in sales of agricultural commodities).

⁴⁵ SARAH A. LOW & STEPHEN VOGEL, U.S. DEP'T OF AGRIC., DIRECT AND INTERMEDIATE MARKETING OF LOCAL FOODS IN THE UNITED STATES 4 (2011), available at <http://www.ers.usda.gov/publications/err-economic-research-report/err128.aspx#.Ut6dexAo7cs>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ The survey was determined to be exempt from IRB review by the University of Akron Institutional Review Board. Letter on file with author. The Institutional Review Board typically must approve "non-exempt" research before it may begin with human subjects. *Institutional Review Boards (IRBs)*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://www.hhs.gov/ohrp/assurances/irb/> (last visited Aug. 25, 2014).

⁴⁹ Emily Broad Leib calls these farms part of the "alternative food system." *The Forgotten Half*, *supra* note 2, at 31–32.

below describes how I designed and distributed the local farmer survey and includes a discussion of the questions farmers were asked.

I used the website SurveyMonkey.com to create a ten-question survey, which was then distributed by e-mail to farmers across the country. Farmers had the option of answering some or all of the questions asked. The first question solicited information on the location, type, and size of the farm, as well as the number of years the farmer had been farming. The final question was an open-ended question to solicit the farmers' opinions on federal local food policy in a narrative form. The eight questions in-between were Likert-type questions in which farmers were asked whether they strongly approved, approved, had a neutral opinion, disapproved, strongly disapproved, or were not familiar with various legislative acts, USDA agency grants and initiatives, and USDA Secretary Vilsack. In addition to answering the Likert-type question, farmers had the option of providing a narrative response to each question.

A link to the survey was e-mailed directly to local farmers.⁵⁰ E-mail addresses were identified through farmers market websites and other websites housing local farmer information.⁵¹ More than 200 emails with the survey link were distributed from late July through December of 2013; fifty-six responses were obtained, although not all farmers answered every question.⁵² The responses represent farmers from more than twenty states, with the greatest number of responses coming from Ohio (ten), Pennsylvania (seven), Michigan (six), and Georgia (five).⁵³ Twenty-eight farmers reported having a farm smaller than 25 acres; nine farmers reported having a farm between 25 and 49.9 acres; one farmer reported having a farm between 50 and 99.9 acres; eight farmers reported having a farm between 100 and 199.9 acres; and five farmers reported having a farm between 200 and 400 acres.⁵⁴ Of these farmers, nineteen grew only vegetables, ten raised only livestock, three grew only flowers, two grew only fruit, and nineteen grew some combination of vegetables, flowers,

⁵⁰ See Appendix for the survey questions.

⁵¹ Many farmers market websites have links to vendors where information about the farmer, the farm operation, and contact information can be obtained. Realfarmers.com was another online source used to locate farmers. To a certain extent, I selected which farms received the survey.

⁵² The results of the survey are on file with the author.

⁵³ This question had fifty-one responses.

⁵⁴ This question had fifty-one responses. Unfortunately, I did not differentiate between the number of acres cultivated, leased, or grazed, and the number of acres owned. Some of the "larger" farms could have a smaller number of acres actually cultivated.

livestock, and fruit.⁵⁵ I also inquired about how long the farmer had been farming.⁵⁶ Most local farmers had been farming ten years or less, fourteen farmers had been farming five years or less, seventeen farmers had been farming between six and ten years, four farmers had been farming between sixteen and twenty years, no farmers reported farming twenty-one to twenty-five years, three farmers had been farming twenty-six to thirty years, and eleven farmers had been farming for more than thirty-one years.

Considering that the survey was distributed during the height of the farming season, I am satisfied with the response rate. The results represent a cross section of local farmers, from all across the country, engaged in a variety of farming operations, with various levels of farming expertise, thereby providing different perspectives on what has transpired over the last five years.

C. The Growth of the Local Food Movement

Perhaps because of the identified benefits of local food, the local food movement has steadily grown over the past twenty years.⁵⁷ In many ways, local food is the new “organic.”⁵⁸ John Ikerd, a prominent agricultural economic scholar, noted that “[l]ocal foods have replaced organic foods as the most dynamic sector of the retail food market. . . . For many people, *local* has become more important than *organic*.”⁵⁹

The growth of the direct market outlets used by local farmers is one indication that consumers are increasingly interested in purchasing food from a local farmer or rancher. Farmers markets are perhaps the most visible direct markets. In 1994, the first year the USDA began gathering information on farmers markets, there were

⁵⁵ This question had fifty-three responses.

⁵⁶ This question had fifty-four responses.

⁵⁷ Braaten & Coit, *supra* note 21, at 10 (describing the “upsurge in interest” in the local food movement). However, scholars like Neil D. Hamilton have been discussing the importance of local food for more than decade. *See generally* Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7 (1996) [hereinafter *Tending the Seeds*]; Neil D. Hamilton, *Greening Our Garden: Public Policies to Support the New Agriculture*, 2 DRAKE J. AGRIC. L. 357 (1997); NEIL D. HAMILTON, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* (1999).

⁵⁸ For example, the cover of the March 12, 2007, issue of *Time* magazine states “Forget Organic. Eat Local.” *Forget Organic. Eat Local*, TIME, Mar. 12, 2007, available at <http://content.time.com/time/covers/0,16641,20070312,00.html>.

⁵⁹ JOHN IKERD, HEALTHY FOOD, LOCAL FOOD (2009), available at <http://web.missouri.edu/ikerdj/papers/Jeff%20City%20Catholic%20Conf%20—%20Healthy%20Local%20Food.htm>.

approximately 1755 farmers markets listed in the National Directory of Farmers Markets.⁶⁰ In 2008, the year of Michael Pollan's letter to the future president, there were 4685.⁶¹ More than 3000 additional farmers markets were added to the directory during the first four years of Obama's presidency.⁶² The most recent USDA survey from 2013 reported 8144 farmers markets.⁶³

There has been a similar increase in the number of community supported agriculture (CSA) farms, from around 650 in the mid-1990s to more than 12,500 farms in 2007.⁶⁴ "[T]he number of small farms that cater to their neighbors has increased [twenty] percent, to 1.9 million in the last six years."⁶⁵

Consumer demand for local produce in both rural and urban areas has resulted in a new generation of farmers. Agricultural law scholar Neil D. Hamilton has labeled this next generation of farmers "New Agrarians."⁶⁶ Hamilton notes that New Agrarians often come from non-agricultural backgrounds and have a variety of economic, ethnic, racial, geographic, and educational distinctions.⁶⁷ Despite these differences, New Agrarians have "enlightened attitude[s] to resource conservation and sustainability and are interested in embracing environmental stewardship."⁶⁸ In addition, they view farming as an "avenue to economic development" and "economic opportunity."⁶⁹ New Agrarians are tech savvy and have the entrepreneurial drive to make their farms successful businesses.⁷⁰

⁶⁰ U.S. Dep't of Agric., *National Count of Farmers Market Directory Listing Graph: 1994-2013*, <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth> (last modified Aug. 3, 2013).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Scott Malone, *Farmers Warm to Community Agriculture Model*, REUTERS (Aug. 26, 2009, 7:07 PM), <http://www.reuters.com/article/2009/08/26/us-usa-farms-community-idUSTRE57P5O920090826>; *Tending the Seeds*, *supra* note 57, at 16.

⁶⁵ Marian Burros, *Preserving Fossil Fuels and Nearby Farmland by Eating Locally*, N.Y. TIMES (Apr. 25, 2007), <http://www.nytimes.com/2007/04/25/dining/25loca.html?ref=localfood&pagewanted=all>.

⁶⁶ Neil D. Hamilton, *America's New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523, 523 (2011).

⁶⁷ *Id.* at 524.

⁶⁸ *Id.* at 527.

⁶⁹ *Id.* at 527–28.

⁷⁰ *Id.* at 526–27.

New mechanisms for training this next generation of farmers have also emerged. Some colleges and universities now offer courses for emerging farmers. For example, the University of Washington offered a biology course titled “The Urban Farm,” and students learned farming principles and basic skills about food production in urban areas.⁷¹ There are new incubator programs, such as the California Farm Academy, which train “beginning farmers in agricultural production, business planning and marketing of specialty crops, poultry and livestock.”⁷² Adding a children’s nutrition focus, the AmeriCorps Service Network’s new FoodCorps program recruits “talented leaders for a year of paid public service building healthy school food environments in limited-resource communities” through school gardens.⁷³

With the growth of local food production in both rural and urban areas, the local food movement has been integrated into society. In 2007, the word “locavore,” a “person who endeavors to eat only locally produced food,”⁷⁴ was chosen as *New Oxford American Dictionary*’s word of the year.⁷⁵ That same year, bestselling novelist Barbara Kingsolver published her nonfiction book *Animal, Vegetable, Miracle: A Year of Food Life*; in the book, Kingsolver recounts her family’s attempt to eat locally for a year.⁷⁶ Sandwiching Kingsolver’s bestseller were two other bestsellers about local food, Pollan’s *The Omnivore’s Dilemma* and *In Defense of Food: An Eater’s Manifesto*.⁷⁷

Discussion of the local food movement has not been limited to books. Documentaries, such as *King Corn*⁷⁸ and *Food, Inc.*,⁷⁹ have

⁷¹ *Down on the Farm, a Vibrant Community*, UNIV. OF WASH. COLL. OF ARTS & SCI. (2010), <http://www.artsci.washington.edu/newsletter/July10/UWFarm.asp> (last visited Aug. 3, 2014).

⁷² *California Farm Academy*, CTR. FOR LAND-BASED LEARNING, <http://landbasedlearning.org/farm-academy> (last visited Aug. 3, 2014).

⁷³ *Become a Service Member*, FOODCORPS, <https://foodcorps.org/become-a-service-member> (last visited Aug. 3, 2014).

⁷⁴ Grist Staff, *Locavore is New Oxford American Dictionary Word of the Year*, GRIST (Nov. 17, 2007, 2:48 AM), <http://grist.org/article/locavore/>.

⁷⁵ *Oxford Word of the Year: Locavore*, OXFORD UNIV. PRESS BLOG (Nov. 12, 2007, 7:08 AM), <http://blog.oup.com/2007/11/locavore/>.

⁷⁶ BARBARA KINGSOLVER, *ANIMAL, VEGETABLE, MIRACLE: A YEAR OF FOOD LIFE* (2007).

⁷⁷ See Angelo, *supra* note 2, at 593; *OMNIVORE’S DILEMMA*, *supra* note 12; *IN DEFENSE OF FOOD*, *supra* note 12.

⁷⁸ *KING CORN* (Mosaic Films 2007).

⁷⁹ *FOOD, INC.* (Magnolia Pictures 2009).

further exposed how industrial agriculture⁸⁰ has eliminated the family farm and generated further interest in the local food movement. In addition to gracing the silver screen, the local food movement has become trendy. Smartphone applications, such as the “Locavore App,” allow users to find local, in-season food from farmers markets and farms,⁸¹ and upscale resorts offer weekend specials to celebrate local food.⁸²

The local food movement has also made its way to Capitol Hill.⁸³ Perhaps the most visible recognition of the local food movement in Washington, D.C. was the planting of the White House Kitchen Garden in 2009.⁸⁴ The White House garden and Michelle Obama’s *Let’s Move!* campaign highlight fresh, local food as important to combating childhood obesity.⁸⁵ With the First Family transformed into locavores, local food policy has become something worthy of discussion at the federal level.

II

DORMANT NOT DOMINANT: LOCAL FOOD PLATFORMS IN THE 2008 AND 2012 PRESIDENTIAL CAMPAIGNS

Months before vegetables were sprouting from the South Lawn and the Obamas were considered locavores, the 2008 presidential campaign was underway. And even though the federal government

⁸⁰ Pollan describes industrial farming as a method that relies on fossil fuels and chemical fertilizers. See OMNIVORE’S DILEMMA, *supra* note 12; see also Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210, 213 (1993) (describing the “industrialization” of agriculture); Jodi Soyars Windham, *Putting Your Money Where Your Mouth Is: Perverse Food Subsidies, Social Responsibility & America’s 2007 Farm Bill*, 31 ENVIRONS ENVTL. L. & POL’Y J. 1, 6–9 (2007) (describing the reasons for the rise of industrial agriculture in America). Numerous scholars have explored the negative impacts of industrial agricultural practices. See articles cited *supra* note 2.

⁸¹ LOCAVORE, <http://www.getlocavore.com> (last visited Aug. 4, 2014).

⁸² See *Luxury and Locavore Meet at Lake Placid for Golden Arrow Resort’s Farm Tour Weekend*, ELITE TRAVELER (Aug. 9, 2012), <http://www.elitetraveler.com/travel-news/luxury-and-locavore-meet-at-lake-placid-for-golden-arrow-resorts-farm-tour-weekend>.

⁸³ The 2008 Farm Bill definition was the first legislative acknowledgement of local food.

⁸⁴ The First Lady’s book followed. MICHELLE OBAMA, *AMERICAN GROWN: THE STORY OF THE WHITE HOUSE KITCHEN GARDEN AND GARDENS ACROSS AMERICA* (2012).

⁸⁵ Andrew Martin, *Is a Food Revolution Now in Season?*, N.Y. TIMES (Mar. 21, 2009), http://www.nytimes.com/2009/03/22/business/22food.html?pagewanted=all&_r=0 (noting that the First Lady has been “[t]he most vocal booster” of local food).

controls food,⁸⁶ something on which every American relies, there was very little discussion of agricultural policy—much less local food policy—during the 2008 campaign season.⁸⁷ When Obama discussed food policy it was in the context of his plan for rural America.⁸⁸ In his plan, Obama portrayed himself as having a preference for small farms over agribusiness.⁸⁹ He supported capping subsidies to mega-farms, while Senator John McCain “[o]pposed policies that would help family farms stay in business.”⁹⁰ Obama’s official campaign website also included a position paper addressing rural issues in which he stated he would “implement USDA policies that promote local and regional food systems.”⁹¹ Obama’s plan displayed further commitment to new farmers by providing tax incentives to “make it easier for new farmers to afford their first farm.”⁹²

In contrast, McCain rarely discussed his agricultural policies. He was described as someone who “ha[d] never met a farm bill he liked.”⁹³ McCain did convene an agricultural advisory committee in 2007, stating: “Farming and agriculture production [are] part of the backbone of our great country. As president, I will support addressing the larger needs of the farming community abiding by the same

⁸⁶ See McCabe, *supra* note 10, at 153–54 (describing how the federal government controls America’s food system).

⁸⁷ Ali, *What Does an Obama Win Mean for the U.S. Food Supply?*, ETHICUREAN, <http://www.ethicurean.com/2008/11/06/obama-and-the-food-supply/> (last visited Aug. 4, 2014) (“[B]etween April and October, John McCain uttered the word ‘agriculture’ only twice, and ‘nutrition’ just once. Barack Obama did slightly better, referring to ‘agriculture’ twelve times and ‘nutrition’ four times. He gave farms a passing mention in his speech at the Democratic National Convention in August.”). Despite being relatively quiet on the local food issue, President Obama was vocal about genetically modified organisms (GMOs). While on the campaign trail in 2007, President Obama promised Iowa farmers the following: “[W]e’ll let folks know whether their food has been genetically modified because Americans should know what they’re buying.” *President Obama Signs ‘Monsanto Protection Act,’* ECOWATCH (Mar. 27, 2013, 4:00 PM), <http://ecowatch.com/2013/obama-signs-monsanto-protection-act/>.

⁸⁸ See OBAMA FOR AM., OBAMA VS. MCCAIN ON AGRICULTURE AND RURAL ISSUES, available at http://obama.3cdn.net/0ac86d6cd1d15c3fc8_xhamvyq11.pdf (last visited Sept. 12, 2014).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Wall Street Crisis a Top Priority, But What About Our Farms?*, N.Y. BOUNTY (Sept. 25, 2008, 11:40 PM), <http://mcorreia.wordpress.com/2008/09/25/wall-street-crisis-a-top-priority-but-what-about-our-farms/>.

⁹² *Id.*

⁹³ Forrest Laws, *Farmers’ Decision Will Not Be Easy in November*, DELTA FARM PRESS (Sept. 29, 2008), <http://deltafarmpress.com/farmers-decision-will-not-be-easy-november>.

standards of common sense and fiscal restraint as demonstrated by our nation's hardworking families.”⁹⁴ Yet his staunch opposition to spending for farm programs, flood control, and rural development often drew criticism from farmers who relied on this type of support.⁹⁵

An interview involving representatives from both the McCain and Obama campaigns demonstrated the weight each candidate gave to local food. When asked specifically about the locally grown food movement, a McCain representative noted that “McCain [was] a major supporter of locally grown products,” but provided few details specifying this support.⁹⁶ In contrast, the Obama representative enthusiastically responded that the local food movement

is one of the most exciting developments in agriculture today. . . . It creates new opportunities for future generations to become or remain involved in agriculture. . . . The consumer [] benefits by knowing the source of their food and appreciating the procedure. There is plenty of room for both large-scale commercial agriculture and smaller, more traditional entities to progress.⁹⁷

Further distinctions between the candidates arose when the 2008 Farm Bill was due for a vote in the summer of 2008. Although the 2008 Farm Bill continued to provide subsidies to the largest farms, the bill increased financial support for food stamps and nutrition programs, and it also created new programs with a sustainability focus.⁹⁸ For example, the 2008 Farm Bill provided funding to support organic farmers and, for the first time, it included coverage for farmers of fruit and vegetables or specialty crops.⁹⁹ In addition, the 2008 Farm Bill included tax incentives for land conservation and increased emphasis on rural development.¹⁰⁰ One agricultural policy expert described these changes as “meaningful” and a departure from

⁹⁴ Kisha Lewellyn Schlegel, *Pick Your Ticket: How the Presidential Candidates View Agriculture*, NEWWEST (Feb. 5, 2008), http://newwest.net/topic/article/pick_your_ticket_how_the_presidential_candidates_view_agriculture/C520/L40/.

⁹⁵ Laws, *supra* note 93.

⁹⁶ Dave Lefever, *Candidate Reps Discuss Farm Policy Proposals*, LANCASTER FARMING (Oct. 24, 2008) (on file with author).

⁹⁷ *Id.*

⁹⁸ David M. Herszenhorn & David Stout, *Defying President Bush, Senate Passes Farm Bill*, N.Y. TIMES (May 15, 2008), <http://www.nytimes.com/2008/05/15/washington/15cnd-farm.html>.

⁹⁹ See David M. Herszenhorn, *Reaching Well Beyond the Farm*, N.Y. TIMES (May 20, 2008), <http://www.nytimes.com/2008/05/20/washington/20farm.html>.

¹⁰⁰ Herszenhorn & Stout, *supra* note 98.

the status quo in terms of agricultural policy.¹⁰¹ Although neither candidate was present to vote on the 2008 Farm Bill,¹⁰² Senator Obama supported the bill; his opponent, McCain, did not.¹⁰³

While biofuels or energy crops were often what both candidates discussed when traveling across America's heartland,¹⁰⁴ Obama also provided specifics for supporting local production and supporting new young farmers.¹⁰⁵ McCain, on the other hand, was criticized for having an agricultural platform that "never mention[ed] food, local production or the rural economy."¹⁰⁶ Given his fiscally conservative approach to agricultural policy, McCain's criticism of Obama's local food efforts is not surprising. In 2010, McCain and two other GOP senators sent a letter to the president complaining that resources were being diverted from "conventional farmers who produce the vast majority of our nation's food supply . . . [to] small, hobbyist and organic producers whose customers generally consist of affluent patrons at urban farmers markets."¹⁰⁷ Today, McCain remains critical of "pork" and farm subsidies in the most recent versions of the farm bill¹⁰⁸ and voted against the 2014 Farm Bill.¹⁰⁹

¹⁰¹ Herszenhorn, *supra* note 99; cf. Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 VILL. ENVTL. L.J. 141, 161–62 (2011) (discussing the improvements of the 2008 Farm Bill).

¹⁰² *Barack Obama II's Voting Records*, PROJECT VOTE SMART, <http://votesmart.org/candidate/key-votes/9490/barack-obama-ii> (last visited Aug. 4, 2014); *John McCain III's Voting Records*, PROJECT VOTE SMART, <http://votesmart.org/candidate/key-votes/53270/john-mccain-iii/?p=7#.U-B2rSjEeTM> (last visited Aug. 4, 2014); see also Larry Rohter, *Obama Camp Closely Linked With Ethanol*, N.Y. TIMES (June 23, 2008), http://www.nytimes.com/2008/06/23/us/politics/23ethanol.html?pagewanted=all&_r=0 (noting that McCain would have vetoed the bill as president).

¹⁰³ Consistent with McCain's campaign promises for fiscal responsibility, McCain opposed the 2008 Farm Bill, calling it "a bloated piece of legislation." Ken Dilanian, *Bill Includes Billions in Farm Subsidies*, USA TODAY (May 15, 2008), http://usatoday30.usatoday.com/news/washington/2008-05-15-farmbill_N.htm.

¹⁰⁴ Obama supported subsidizing domestically produced ethanol; McCain opposed it. Rohter, *supra* note 102.

¹⁰⁵ Jim Goodman, *McCain and Obama Need to Talk Real Farm Policy*, ORGANIC CONSUMERS ASS'N (Oct. 10, 2008), http://www.organicconsumers.org/articles/article_15099.cfm.

¹⁰⁶ *Id.*

¹⁰⁷ Philip Brasher, *GOP Senators Challenge Vilsack on Local Foods Focus*, DES MOINES REG. (May 4, 2010), <http://blogs.desmoinesregister.com/dmr/index.php/2010/05/04/gop-senators-challenge-vilsack-on-local-foods-focus>.

¹⁰⁸ Lindsey Boerma, *McCain Mocks Farm Bill Pork on Senate Floor*, CBS NEWS (June 14, 2012), <http://www.cbsnews.com/news/mccain-mocks-farm-bill-pork-on-senate-floor/>.

Although agricultural policy was still not widely discussed during the 2012 election season, there was evidence that food was becoming increasingly political.¹¹⁰ By this time, Michelle Obama had initiated her *Let's Move!* campaign, Congress had passed two food-related pieces of legislation, and the USDA had launched the *Know Your Farmer, Know Your Food* (KYF) campaign. Obama continued to discuss local food in the context of his agenda for rural America,¹¹¹ but he also had these accomplishments from which to draw. As part of this rural plan, Obama outlined three overarching goals: (1) ensure economic opportunities for family farmers, (2) support rural economic development, and (3) improve rural quality of life.¹¹² He identified “encourag[ing] organic and local agriculture” by “[p]romot[ing] regional food systems” as one way to ensure economic opportunity for family famers.¹¹³

Additionally, in President Obama’s first term, the USDA had implemented several initiatives to support the local food movement representing a “dramatic shift from prior USDA policies.”¹¹⁴ Agricultural law expert Susan Schneider expressed the opinion that the Obama administration coupled its support for production agriculture “with a recognition of the many benefits of local/regional foods.”¹¹⁵ Obama claimed “a record of four years of USDA policies in support of local/regional foods.”¹¹⁶ Local farmers also acknowledged approval of the USDA policies and encouraged Obama’s re-election.¹¹⁷

In contrast, 2012 Republican presidential candidate Mitt Romney’s position on agricultural and food policy was something of an open

¹⁰⁹ Alan Bjerga, *Congress Passes Farm Bill to End Fight over Food Stamps*, BLOOMBERG (Feb. 4, 2014), <http://www.bloomberg.com/news/2014-02-04/congress-passes-farm-bill-to-end-fight-over-food-stamps.html>.

¹¹⁰ Susan Ruland, *Election Pains or Gains?*, FOOD PROCESSING (Oct. 4, 2012), <http://www.foodprocessing.com/articles/2012/election-pains-or-gains/?start=0>.

¹¹¹ See *The Obama-Biden Plan*, CHANGE.GOV, http://change.gov/agenda/rural_agenda/ (last visited Aug. 4, 2014).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Susan Schneider, *The Last Four Years: Change at the USDA*, AGRIC. L. BLOG (Oct. 28, 2012, 2:24 PM), <http://aglaw.blogspot.com/2012/10/the-last-four-years-change-at-usda.html>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See, e.g., Matt Russell & Patrick Standley, *Iowa Farms NEED Another Four Years of Obama*, BLEEDING HEARTLAND (Oct. 24, 2012, 10:20 PM), <http://www.bleedingheartland.com/diary/5803/iowa-farms-need-another-four-years-of-obama>.

question.¹¹⁸ And there was no rural platform or agricultural platform to be found on his campaign website.¹¹⁹

As the election season progressed, Romney's position on farm policy became more apparent. Romney appeared to approve of government support for some farmers, and in that respect, was more in line with President Obama than Senator McCain.¹²⁰ President Obama and Romney also supported ethanol programs and received a "B" on their agricultural policy evaluated from responses to a survey conducted by the Corn Caucus Project, an association of the Iowa Corn Growers Association.¹²¹

The two candidates also differed on many farm issues. Romney was critical of President Obama's overregulation of the farming industry and emphasized his support for free enterprise.¹²² Romney's advisory committee consisted of individuals with industrial agricultural backgrounds, further suggesting that Romney's position would support conventional large-scale farming practices.¹²³ Romney also blamed President Obama's lack of leadership when Congress was unable to pass a farm bill in 2012 when the 2008 Farm Bill expired.¹²⁴

Romney's full agricultural agenda was not revealed until October 2012 when he released his *Vision for Agricultural Prosperity*. This paper outlined the pillars of his agricultural policy, which included a

¹¹⁸ Eleanor West, *Agriculture Policy Cheat Sheet: Obama Vs. Romney*, FOOD REPUBLIC (July 10, 2012, 9:01 AM), <http://www.foodrepublic.com/2012/07/10/agriculture-policy-cheat-sheet-obama-vs-romney> (noting that "[n]ot even [Mitt Romney] seems to know for sure" where he stands on food-related issues).

¹¹⁹ Tom Laskawy, *The Man Without a Plan: Romney Has No Real Food and Farming Platform*, GRIST (Sept. 10, 2012, 10:15 AM), <http://grist.org/food/the-man-without-a-plan-romney-has-no-real-food-and-farming-platform/>.

¹²⁰ West, *supra* note 118.

¹²¹ CORN CAUCUS PROJECT, IOWA CORN GROWER'S ASS'N (2011), *available at* http://www.iowacorn.org/documents/filelibrary/presidential_caucus/smallerreportcard_grade_C2B2294DC9F28.pdf ("Presidential candidates were asked to answer a survey on questions that relate to the National Corn Growers Association legislative priorities. Topics included in the survey [were]: ethanol, farm programs, trade, EPA and transportation.").

¹²² See John Vogel, *Romney Farm Team Unveils Agricultural Policy Platform*, FARM PROGRESS (Aug. 20, 2012), http://farmprogress.com/story-romney-farm-team-unveils-agricultural-policy-platform-9-62594-spx_0.

¹²³ *Mitt Romney Will Kill More Small Farms*, NAT'L FORK (Apr. 18, 2012), <http://nationalfork.com/mitt-romney-will-kill-more-small-farms/>.

¹²⁴ Erik Wasson, *Romney Blames Obama for Congress's Failure to Pass New Farm Bill*, THE HILL (Oct. 9, 2012, 6:39 PM), <http://thehill.com/policy/finance/261015-romney-blames-obama-for-failure-to-pass-farm-bill>.

fair tax code, a rational regulatory environment, access to markets around the world, and embracing the nation's domestic energy resources.¹²⁵

Another example of the candidates' different agricultural priorities was evident in their responses to questions posed by United Fresh Produce Association.¹²⁶ United Fresh submitted questions to the Obama and Romney campaigns about the produce industry's top issues: immigration, food safety, agricultural regulation, the farm bill, taxes, and nutrition.¹²⁷ In the context of questions pertaining to the farm bill, Obama noted that "[s]pecialty crops are one of the many important components of our agricultural system," and explained that he "endorsed a farm bill that recognizes the diversity of American agriculture and the importance of providing access to healthy foods by supporting programs that focus on fruits, vegetables, nuts and organic crops."¹²⁸ Romney's response, on the other hand, made no mention of specialty crops. Instead, he focused on business implications, noting that "[a]gricultural policy in this country is evolving, moving away from decades of government intervention and subsidies toward a more market-based system."¹²⁹

When asked about food safety, President Obama highlighted his accomplishment of passing "the most comprehensive reform of our nation's food safety laws in decades—giving FDA the resources, authority and tools they need to make real improvements to our food safety system."¹³⁰ Obama again relied on his record when asked about nutritional programs noting that he "signed the Healthy, Hunger-Free Kids Act into law that ensures millions of children across the US have access to healthier and more nutritious meals

¹²⁵ ROMNEY FOR PRESIDENT, INC., AGRICULTURAL PROSPERITY: MITT ROMNEY'S VISION FOR A VIBRANT RURAL AMERICA 4 (2012), available at http://www.hagstromreport.com/assets/2012/2012_1009_RomneyAgriculture.pdf.

¹²⁶ According to its website, "United Fresh Produce Association is the industry's leading trade association committed to driving the growth and success of produce companies and their partners." *The United Fresh Produce Association*, UNITED FRESH, <http://www.unitedfresh.org/about> (last visited Aug. 4, 2014).

¹²⁷ *President Obama and Governor Romney Respond to United Fresh on the Produce Industry's Top Issues*, UNITED FRESH, http://www.unitedfresh.org/presidential_nominees_responses (last visited Aug. 4, 2014).

¹²⁸ UNITED FRESH, OBAMA CAMPAIGN RESPONDS TO QUESTIONS FROM UNITED FRESH, available at <http://www.unitedfresh.org/assets/ObamaResponse.pdf> [hereinafter OBAMA CAMPAIGN RESPONDS].

¹²⁹ UNITED FRESH, ROMNEY CAMPAIGN RESPONDS TO QUESTIONS FROM UNITED FRESH, available at <http://www.unitedfresh.org/assets/RomneyResponse.pdf>.

¹³⁰ OBAMA CAMPAIGN RESPONDS, *supra* note 128.

during school.”¹³¹ Obama also recognized that there was more to be done to “encourag[e] schools to promote healthy eating and ensur[e] students are offered food and vegetables every day of the week” and to “support[] regional food hubs and the establishment of grocery stores in underserved neighborhoods.”¹³²

III

PRESIDENTIAL ACCOMPLISHMENTS

Current USDA publications identify President Obama as supporting local food systems. This support can be seen through legislative acts, agency initiatives, and personnel decisions. One document notes that President Obama “has placed an emphasis on local food systems because of the role they play in driving economic development, creating jobs, and preserving open space.”¹³³ The USDA *Know Your Farmer, Know Your Food* homepage quotes President Obama as stating “[l]ocal food systems work for America: when we create opportunities for farmers and ranchers, our entire nation reaps the benefit.”¹³⁴ This is where President Obama’s legacy becomes more difficult to discern. While President Obama has focused on the importance of local food from the consumer’s perspective, the farmers who produce this food still struggle.

A. Legislation

In the past five years, two legislative acts—the Healthy, Hunger-Free Kids Act of 2010 and the Food and Safety Modernization Act of 2010—have acknowledged local food. While the focus of one is nutrition and the other is food safety, apart from the 2014 Farm Bill, they are the only pieces of legislation enacted during President Obama’s presidency to use the term “local food.”¹³⁵

¹³¹ *Id.*

¹³² *Id.*

¹³³ KNOW YOUR FARMER, *supra* note 39, at 75.

¹³⁴ KNOW YOUR FARMER, KNOW YOUR FOOD COMPASS, http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_COMPASS (last visited Aug. 5, 2014).

¹³⁵ The first federal act to use the phrase “local food” was the 2008 Farm Bill.

1. *Healthy, Hunger-Free Kids Act of 2010*

a. *Overview*

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) is an amendment to the Richard B. Nelson National School Lunch Program enacted in 1946.¹³⁶ It expands the number of students who can participate in the need-based child nutrition programs implemented by the USDA, like the National School Lunch and Breakfast programs and the Summer Food Service programs,¹³⁷ and provides new funding of \$4.5 billion over ten years.¹³⁸ In addition to increasing access to and funding for these programs, the HHFKA addresses childhood obesity in a number of ways.¹³⁹ For example, the act sets nutritional standards for the first time for all food sold in schools, including vending machines and à la carte lines.¹⁴⁰

The HHFKA also recognizes the importance of local food in combating childhood obesity by formally establishing farm to school programs like the National School Lunch and Summer Food Service.¹⁴¹ Farm to school programs connect local producers with schools and preschools with the objective of serving local, fresh food in school cafeterias to improve childhood nutrition.¹⁴² The programs have been recognized as increasing access to fresh fruit and vegetables and therefore increasing consumption of these items.¹⁴³

¹³⁶ Lauren Kaplin, *A National Strategy to Combat the Childhood Obesity Epidemic*, 15 U.C. DAVIS J. JUV. L. & POL'Y 347, 352 (2011).

¹³⁷ See *id.*; see also Marion Nestle, *President Signs Healthy, Hunger-Free Kids Act, at Last!*, FOOD POLITICS (Dec. 14, 2010), <http://www.foodpolitics.com/2010/12/president-signs-healthy-hunger-free-kids-act-at-last/>.

¹³⁸ Nestle, *supra* note 137.

¹³⁹ For a more detailed discussion of the strengths and weaknesses of the Healthy, Hunger-Free Kids Act of 2010, see Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*, 68 WASH. & LEE L. REV. 1699 (2011).

¹⁴⁰ Helena Bottemiller, *President to Sign Landmark Child Nutrition Bill*, FOOD SAFETY NEWS (Dec. 13, 2010), <http://www.foodsafetynews.com/2010/12/president-to-sign-landmark-child-nutrition-bill-today/>.

¹⁴¹ *USDA Rule Encourages Local Food for School Meals*, FOOD SAFETY NEWS (Apr. 29, 2011), <http://www.foodsafetynews.com/2011/04/usda-rule-to-encourage-local-food-for-school-meals/>.

¹⁴² NAT'L FARM TO SCH. NETWORK, THE BENEFITS OF FARM TO SCHOOL, available at <http://www.farmtoschool.org/Resources/BenefitsFactSheet.pdf>.

¹⁴³ *Id.* (reporting an increase in fruit and vegetable consumption of .99 to 1.3 more servings per day in children in kindergarten through twelfth grade).

Farmers benefit through this new market outlet option, as does the regional economy.¹⁴⁴

Under the “access to local foods” provision in the 2010 law, the Secretary of Agriculture is directed to carry out a farm to school program whereby eligible schools will have access to local food.¹⁴⁵ Grants are awarded to eligible schools to “implement[] farm to school programs.”¹⁴⁶ The highest priority of funding is given to schools that make local food products available on the menu as well as incorporate experiential nutrition education activities into the curriculum by having children participate in agricultural education activities.¹⁴⁷

The HHFKA designates \$5 million in new funds for supporting farm to school programs.¹⁴⁸ Of the \$5 million, \$3.5 million takes the form of grants to schools; the remaining \$1.5 million provides technical assistance to implement farm to school programs.¹⁴⁹ From the \$3.5 million, applicants are eligible for grants up to \$100,000 to fund programs that bring locally produced foods to school cafeterias.¹⁵⁰ Two types of grants are available: planning grants and implementation grants.¹⁵¹ Planning grants assist schools that are starting to develop farm to school programs and accounts for 25% of the allotted money.¹⁵² The remaining 75% goes to implementation grants for schools or other organizations already involved in farm to school programs.¹⁵³

¹⁴⁴ One Oregon study from before the act noted that “for every Oregon job directly created by school districts purchasing local food, successive rounds of economic activity create another 1.43 jobs, for an overall increase of 2.43 jobs.” Stacey Sobell, *School Food Success: Oregon Lawmakers Pledge to Spend +\$1M on Local Ingredients*, CIVIL EATS (Sept. 17, 2013), <http://civileats.com/2013/09/17/school-food-success-oregon-lawmakers-pledge-to-spend-over-a-million-on-local-ingredients/#sthash.XUzx6SFw.dpuf>.

¹⁴⁵ 42 U.S.C. § 1769(g)(2) (2012).

¹⁴⁶ *Id.* § 1769(g)(3)(A)(vii).

¹⁴⁷ *Id.* § 1769(g)(5)(A)–(C). In addition, local education agencies must establish a “local school wellness policy” for all schools under its jurisdiction. *Id.* § 1758b(b)(3). The act delegates to the USDA the duty to promulgate “regulations that provide the framework and guidelines” for these local school wellness policies which focus on limiting the availability of unhealthy foods and developing guidelines for nutrition and physical education. *Id.* § 1758b(b).

¹⁴⁸ Gretchen Goetz, *USDA Makes Grants Available for Farm to School Programs*, FOOD SAFETY NEWS (Apr. 19, 2012), <http://www.foodsafetynews.com/2012/04/usda-makes-grants-available-to-farm-to-school-programs/>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Goetz, *supra* note 148.

¹⁵³ *Id.*

As an example, the Cleveland Municipal School District received a \$45,000 planning grant in 2013 to “engage the technical services and expertise of the Ohio State University Extension to help facilitate and guide us in the development of a more coherent strategy and approach to farm to school programming.”¹⁵⁴ As an example of an implementation grant, Portland Public Schools in Maine received nearly \$100,000 to implement best practices to increase student consumption of local foods and to increase public awareness and community engagement in these efforts.¹⁵⁵ The project plan includes updating central kitchen equipment, certifications, and training in order to become a large volume processor of local foods.¹⁵⁶

To participate in the farm to school program, the local farmer needs to be Good Agricultural Practices (GAP) certified, which is a method of establishing some sort of quality control for the produce served in schools.¹⁵⁷ GAP certification is standard for larger growers, and the USDA has taken extra steps to help smaller farmers become GAP certified.¹⁵⁸

In addition, a federal rule was enacted to give preference in contract bidding for school meals using local farm products. The USDA has stated that the final rule, entitled the Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs,¹⁵⁹ was designed to “encourage use of local farm products in school meals” and to “give a much-needed boost to local farmers and agricultural producers.”¹⁶⁰

b. Farmer Response

All but one of the farmers surveyed responded to the question asking their opinion of the Healthy, Hunger-Free Kids Act. Of the

¹⁵⁴ U.S. DEP’T OF AGRIC., USDA FARM TO SCHOOL FY 2013: GRANT AWARDS 17 (2012), available at http://www.fns.usda.gov/sites/default/files/F2S_Grants-FY2013.pdf.

¹⁵⁵ *Id.* at 9.

¹⁵⁶ *Id.*

¹⁵⁷ Goetz, *supra* note 148.

¹⁵⁸ *Id.*

¹⁵⁹ Food and Nutrition Serv., *Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs*, FED. REG. (Apr. 22, 2011), <https://www.federalregister.gov/articles/2011/04/22/2011-9843/geographic-preference-option-for-the-procurement-of-unprocessed-agricultural-products-in-child>.

¹⁶⁰ Press Release, U.S. Dep’t of Agric., New USDA Rule Encourages the Purchase of Local Agricultural Products for Critical Nutrition Assistance Programs (Apr. 26, 2011), available at <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/04/0180.xml&contentidonly=true>.

fifty-five farmers that responded, thirty-one farmers (56%) reported being unfamiliar with the act. Of the remaining farmers, fourteen farmers (25.45%) approved of the act, four farmers (7.5%) had a neutral perception of the act, three farmers (5.6%) strongly approved of the act, two farmers (3.7%) disapproved of this act, and one farmer (1.8%) strongly disapproved.

Only three farmers provided an additional narrative response. Two of the comments were general statements about farming and the federal government. The most directly relevant on the HHFKA noted that the effectiveness of this act was “hard to tell, but it’s always good to get food into the hands of those who need it.”

c. Assessment

One year after this legislation was enacted, a USDA press release listed “[b]olster[ing] [f]arm to [s]chool [c]onnections” as one of the nine key accomplishments from the act.¹⁶¹ This assessment is hard to dispute. In the 2013 fiscal year, sixty-eight programs in more than thirty-seven states were funded.¹⁶² In the 2014 fiscal year, seventy-one programs in forty-two states, plus the District of Columbia, were funded.¹⁶³

In October 2013, the USDA published the results of the first ever Farm to School Census for the 2011-12 school year.¹⁶⁴ The USDA surveyed more than 13,000 public school districts and received a 75% response rate.¹⁶⁵ The USDA estimates that as of the 2012-2013 school year, 4322 districts, operating approximately 40,328 schools with more than 23,513,237 students in attendance, are buying local products and teaching children where their food comes from.¹⁶⁶ Forty-four percent of districts report participating in farm to school

¹⁶¹ Press Release, U.S. Dep’t of Agric., USDA Celebrates One Year Anniversary of the Healthy, Hunger-Free Kids Act of 2010 (Dec. 13, 2011), *available at* <http://www.fns.usda.gov/pressrelease/2011/051211>.

¹⁶² Press Release, U.S. Dep’t of Agric., USDA Awards First Grants to Increase Local Foods in Eligible Schools (Nov. 14, 2012), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/11/0343.xml>.

¹⁶³ Press Release, U.S. Dep’t of Agric., USDA Announces Additional Support to Help Schools Buy Local (Nov. 19, 2013), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2013/11/0218.xml>.

¹⁶⁴ *The Farm to School Census: National Overview*, U.S. Dep’t of Agric., <http://www.fns.usda.gov/farmtoschool/census#/> (last visited Aug. 26, 2014).

¹⁶⁵ *The Farm to School Census: State & District*, FOOD AND NUTRITION SERV., <http://www.fns.usda.gov/farmtoschool/census#/map> (last visited Aug. 26, 2014).

¹⁶⁶ *The Farm to School Census*, *supra* note 164.

activities, and thirteen percent indicated a desire to participate in farm to school programs in the future.¹⁶⁷ Other reports show farm to school programs increasing from ten in 1997 to over 12,500 in 2012.¹⁶⁸

Interest in farm to school programs at the state level has also increased. For example, the Oregon Legislature “awarded nearly \$1.2 million to Farm to School and School Garden programs for the 2013-15 biennium.”¹⁶⁹

Although no studies have been conducted on the effectiveness of farm to school programs in improving childhood nutrition by reducing obesity, the Centers for Disease Control and Prevention recently announced that obesity rates among preschoolers decreased from 2008 to 2011.¹⁷⁰ This decrease could be due in part to an increased effort to serve fruits and vegetables to preschool-aged children.¹⁷¹

Missing from this analysis is an assessment of how many local farmers participate in farm to school programs.¹⁷² The number of farmers unaware of this program suggests that many farmers still do not know about this new market outlet. Coordinating with school districts might also be difficult. I had a difficult time finding information on how a farmer could become involved with farm to school programs. One website recommended contacting the food service director in the farmer’s school district directly or joining with farmers associations or cooperatives to identify interest in participating in such a program.¹⁷³ Some studies have shown that

¹⁶⁷ *Id.*

¹⁶⁸ NAT’L FARM TO SCH. NETWORK, THE BENEFITS OF FARM TO SCHOOL, *available at* <http://www.maine.gov/education/sfs/benefits-of-farm-to-school.pdf>.

¹⁶⁹ Stacey Sobell, *Oregon Designates \$1.2 Million for Local Food in School Cafeterias, Plus Food, Garden, and Agricultural Education*, ECOTRUST (July 10, 2013), <http://www.ecotruster.org/press/oregon-designates-million-local-food-in-schools.html>.

¹⁷⁰ Ctrs. for Disease Control & Prevention, *Vital Signs: Obesity Among Low-Income, Preschool-Aged Children—United States, 2008–2011*, 62 MORBIDITY & MORTALITY WKLY. REP. 629, 630 (2013), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6231a4.htm?s_cid=mm6231a4_w. The CDC study reports that between 2008 and 2011, “significant downward trends in obesity prevalence” were observed in eighteen states and the U.S. Virgin Islands. *Id.*

¹⁷¹ *Id.* at 631. Emerging studies also show that the availability of fruits and vegetables through farm stands and farmers markets increases consumption of fruits and vegetables. *Investing in Healthy Food Will Save Lives and Dollars (2013)*, UNION OF CONCERNED SCIENTISTS, http://www.ucsusa.org/food_and_agriculture/solutions/expand-healthy-food-access/11-trillion-reward.html (last modified Aug. 7, 2013).

¹⁷² Perhaps that would have been a better question for my survey.

¹⁷³ *Can You Tell Me About Starting Farm to School Programs? I’m a Farmer and I’d Love to Provide Schools in My Area with Healthy Food*, FARM AID (Oct. 2010),

low-volume sales and logistical issues such as storage, refrigeration, and preparation space have deterred farmers from participating in these programs in the past.¹⁷⁴ Despite these challenges, farm to school programs are on the rise and the Healthy, Hunger-Free Kids Act is often cited by President Obama and others within his administration as an example of one way the federal government has improved childhood nutrition and increased access to local food.

2. Food Safety Modernization Act of 2010

a. Overview

The Food and Drug Association (FDA) reports that between 1996 and 2010, there were 131 documented outbreaks associated with contaminated produce in the United States, causing more than 14,000 illnesses and 34 deaths.¹⁷⁵ Highly publicized illnesses from contaminated eggs, peanut butter, and spinach led lawmakers to push for stronger government oversight.¹⁷⁶ That oversight came in the form of the Food Safety and Modernization Act of 2010.¹⁷⁷

The desire to protect consumers, however, did not receive full support from small farmers and food producers, who argued that the stricter regulations had the potential to harm their businesses. Before Congress passed the bill, local food movement advocates, including the National Sustainable Agriculture Coalition, pushed for exemptions for local food producers.¹⁷⁸ The result was the Tester-

<http://www.farmaid.org/site/apps/nlnet/content2.aspx?c=qlI5IhNVJsE&b=2723877&ct=8842627#2>.

¹⁷⁴ Betty T. Izumi et al., *Market Diversification and Social Benefits: Motivations of Farmers Participating in Farm to School Programs*, 26 J. RURAL STUD. 374, 376 (2010), available at <http://www.sciencedirect.com/science/article/pii/S0743016710000161>.

¹⁷⁵ *FSMA Proposed Rule for Produce Safety*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Food/guidanceregulation/FSMA/ucm334114.htm> (last updated Aug. 4, 2014). The CDC reports that “about 48 million people (1 in 6 Americans) get sick, 128,000 are hospitalized, and [3000] die each year from foodborne diseases.” *Background on the FDA Food Safety Modernization Act (FSMA)*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm239907.htm> (last visited Aug. 27, 2014).

¹⁷⁶ GEOFFREY S. BECKER, CONG. RESEARCH SERV., *FOOD SAFETY: SELECTED ISSUES AND BILLS IN THE 110TH CONGRESS 1–2* (2008), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL34152.pdf>.

¹⁷⁷ Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2011).

¹⁷⁸ *Senate Food Safety Bill Includes Improvements that Support Farmers*, NAT'L SUSTAINABLE AGRIC. COAL. (Apr. 14, 2010), <http://sustainableagriculture.net/blog/senate-food-safety-bill-includes-improvements-for-farmers/>.

Hagan Amendment, which was added to the bill before it passed.¹⁷⁹ This amendment exempts qualifying food producers from some of the more costly requirements of the act.¹⁸⁰ For example, prior to the Tester-Hagan Amendment, small farms and food producers would have had to:

[i]dentify and evaluate known or reasonably foreseeable hazards; develop a written analysis of the hazards; identify and implement preventive controls; monitor the effectiveness of the preventive controls; establish procedures that a facility will implement if the preventive controls are found to be ineffective; verify that the preventive controls are adequate and the owner operator is conducting monitoring and is making appropriate corrective actions and that the preventive controls implemented are effectively and significantly minimizing or preventing the occurrence of identified hazards . . . prepare a written plan that documents and describes the procedures used by the facility to comply with the measurements of this section; and conduct a reanalysis whenever a significant change is made in the activities conducted at a facility or every 3 years whichever is earlier.¹⁸¹

Complying with these regulations would have been costly to small farmers. The Tester-Hagan Amendment exempts small farms that sell 51% or more of their produce directly to consumers or retail food establishments in the same state, or within 275 miles of where they are grown, and have an average annual monetary value in the previous three-year period that was less than \$500,000.¹⁸² Small farms and producers must still comply with existing federal regulations and state and local laws. The FDA has the authority to withdraw its exemption from a farm or facility that has been associated with a foodborne illness outbreak.¹⁸³ The bill ultimately

¹⁷⁹ For a detailed examination of the Tester-Hagan Amendment to the FSMA, see Peter Anderson, *Empowering Local and Sustainable Food: Does the Food Safety Modernization Act's Tester-Hagan Amendment Remove Enough Barriers*, 9 J.L. ECON. & POL'Y 145 (2012).

¹⁸⁰ See 21 U.S.C. § 350h(f)(1) (2012) for the exemption of direct farm marketing to the standards for produce safety and 21 U.S.C. § 350g(l)(2) (2012) for the exemption of “a qualified facility” under the hazard analysis and risk-based preventive controls.

¹⁸¹ Margie MacDonald & Judith McGeary, *S. 510 Food Safety Modernization Act: Healthy Local Foods Amendment – Senators Jon Tester and Kay Hagan*, W. ORG. OF RES. COUNCILS, http://www.worc.org/userfiles/file/Local%20Foods/QA_Testter_Amendment.pdf (last visited Aug. 29, 2014).

¹⁸² 21 U.S.C. § 350h(f).

¹⁸³ *Id.* § 350h(f)(3)(A).

passed with bipartisan support and the Tester-Hagan Amendment in place.¹⁸⁴

While this act did not attract a lot of publicity, it overhauled the nation's food safety laws for the first time since the Great Depression.¹⁸⁵ The new law enables the FDA to establish food safety standards for farmers and food processors and to authorize food recalls, something that was left up to food companies before.¹⁸⁶ The goal is to prevent contamination of food and vegetables through water, equipment, worker hygiene, and manure.¹⁸⁷ In addition, the law requires food producers to develop food safety plans, obtain licenses from the FDA, and set up traceability requirements.¹⁸⁸ In addition, stricter laws apply to importers who will be required to verify the safety of their suppliers' products.¹⁸⁹ The law also signals a shift in the focus of the FDA, from responding to contamination to preventing food safety problems.¹⁹⁰

The preventative food safety approach can be seen in two proposed rules published by the FDA in January 2013: the Proposed Rules on Produce Safety Standards and the Preventative Controls for Human Food.¹⁹¹ Both sets of rules could have an effect on small farmers. The proposed produce safety rule "covers all fruits and vegetables except those rarely consumed raw, produced for personal consumption, or destined for commercial processing."¹⁹² The preventative controls

¹⁸⁴ Dan Flynn, *Sunday Surprise: Senate Passes Food Safety Bill*, FOOD SAFETY NEWS (Dec. 20, 2010), <http://www.foodsafetynews.com/2010/12/sunday-surprise-senate-passes-food-safety-bill/#.UwliGfldWSo> (describing the bill's "tortured life").

¹⁸⁵ Debra M. Strauss, *An Analysis of the FDA Food Safety Modernization Act: Protection for Consumers and Boon for Business*, 66 FOOD & DRUG L.J. 353, 354 (2011).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 358–59.

¹⁸⁸ *See id.* at 355.

¹⁸⁹ Sabrina Tavernise, *Groups Urge Action on Food Safety Law*, N.Y. TIMES (July 17, 2012), http://www.nytimes.com/2012/07/17/science/consumer-groups-criticize-delay-on-food-safety-law.html?_r=0.

¹⁹⁰ Statement by Margaret A. Hamburg, Comm'r of Food and Drugs, Food and Drug Admin. (Dec. 21, 2010), available at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm238000.htm>.

¹⁹¹ *Overview of the FSMA Proposed Rules on Produce Safety Standards and Preventive Controls for Human Food*, FOOD AND DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334120.htm> (last visited Aug. 27, 2014).

¹⁹² *Id.*

rule covers facilities that manufacture and process food for human consumption.¹⁹³

b. Farmer Response

All fifty-six local farmers responded to the question asking their opinion of the Food Safety Modernization Act, and the response was overwhelmingly negative. Of the fifty-six farmers that responded, only eleven farmers (19.6%) reported being unfamiliar with this act. Further, eleven farmers (19.6%) disapproved of the act, and eighteen farmers (32%) strongly disapproved. Eleven farmers (19.6%) were neutral, and five farmers (8.9%) approved. No farmers strongly approved of this act.

Only four farmers provided an additional narrative response. Two farmers expressed concern that the regulations will harm their businesses. One farmer lamented that “[t]his will put most small farmers out of business,” while the other remarked “[i]f small farmers have to meet these standards they will close.” The other two farmers noted approval of the act only because of the Tester-Hagan Amendment.¹⁹⁴

c. Assessment

Although the FDA reports that 79% percent of U.S. produce growers (roughly 40,211 out of 190,111) will be exempt from the FSMA requirements,¹⁹⁵ farmers still expressed concern with the proposed FDA rules. The primary concern is that the regulations will be too costly for small farmers and will put them out of business.¹⁹⁶ The only working farm within Akron, Ohio, recently switched from growing sweet corn and other specialty crops to soybeans, a crop

¹⁹³ *FSMA Proposed Rule for Preventive Controls for Human Food*, FOOD AND DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334115.htm> (last updated May 13, 2014).

¹⁹⁴ Comments included: “Only approve with the Tester-Hagan Amendments intact,” and “[r]eason I don’t disapprove is because of Tester-Hagan Amendment which exempts small farms.”

¹⁹⁵ DENIS EBODAGHE ET AL., 16 SMALL FARM DIGEST: FOOD SAFETY FOR SMALL FARMERS 7 (2013), available at http://www.nifa.usda.gov/newsroom/newsletters/smallfarmdigest/sfd_s13.pdf.

¹⁹⁶ See, e.g., Lisa Abraham, *Bessemer Farms Calls It Quits, Says New Farm Rules Too Cumbersome*, AKRON BEACON J. (July 7, 2013), <http://www.ohio.com/news/top-stories/bessemer-farms-calls-it-quits-says-new-farm-rules-too-cumbersome-1.41162#.UI4EuoO0wIM.email>; Jim Ewing, *Food Movement May Be Torpedoed by FDA*, SHOOFLY FARM BLOG (Oct. 26, 2013), <http://shooflyfarmblog.wordpress.com/2013/10/26/food-movement-may-be-torpedoed-by-fda/>.

exempt from the produce rule, and closed its farm stand because the farm “can’t spend enough money to comply.”¹⁹⁷ Other farmers have expressed concern that the proposed FSMA rules are another strike against the small farm and another win for the industrial farmer.¹⁹⁸

Sustainable agriculture advocates agree. Ariane Lotti, National Sustainable Agriculture Coalition’s assistant policy director stated, “[i]f the proposed regulations are finalized without changes, they will unjustifiably create barriers to sustainable and organic farming, chill the growth in local and regional food systems, and further consolidate farming into the hands of the few who can afford to comply with expensive requirements.”¹⁹⁹

Thousands of sustainable and organic farms and local food system entrepreneurs and advocates voiced their concerns to the FDA during the commenting period, which closed in November 2013.²⁰⁰ In addition, seventy-five members of Congress sent a letter to the FDA expressing concerns with farmers’ ability to comply with the proposed rules.²⁰¹ As a result of these comments, in December 2013, the FDA decided to make “significant changes” to key provisions of the two proposed rules affecting small farmers.²⁰² Recognizing that the proposed rules would not have implemented “the law in a way that improves public health protections while minimizing undue burden on farmers and other food producers,” the FDA will revise the language of the proposed rules, publish the revised rules, and accept additional comments on these rules during the summer of 2014.²⁰³

¹⁹⁷ Abraham, *supra* note 196.

¹⁹⁸ See Brian Snyder, *FSMA: There’s Something Happening Here*, WRITE TO FARM (Nov. 1, 2013), <http://writetofarm.com/2013/11/01/fsma-theres-something-happening-here/>.

¹⁹⁹ Tom Philpott, *4 Foods That Could Disappear if New Food Safety Rules Pass*, MOTHER JONES (Nov. 6, 2013, 7:00 AM), <http://www.motherjones.com/tom-philpott/2013/11/will-new-food-safety-law-small-farms-organic-FSMA>.

²⁰⁰ *FDA to Issue Two Revised FSMA Rules Next Summer*, FOOD SAFETY NEWS (Dec. 19, 2013), <http://www.foodsafetynews.com/2013/12/fda-to-issue-revised-fsma-rules/#.UuCsghAo7IV>; see also *Learn About the Issues*, NAT’L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/fsma/learn-about-the-issues/> (last visited Aug. 7, 2014) (listing the concerns of farmers and on-farm food processors).

²⁰¹ Joan Murphy, *75 Members of Congress Ask FDA to Re-Propose FSMA Rules*, PRODUCE NEWS (Nov. 26, 2013), <http://www.producenews.com/index.php/news-dep-menu/test-featured/11802-75-members-of-congress-ask-fda-to-re-propose-fsma-rules>.

²⁰² Statement by Michael Taylor, FDA Deputy Comm’r for Foods and Veterinary Med., Food and Drug Admin. (Dec. 19, 2013), available at http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm379397.htm?source=govdelivery&utm_medium=email&utm_source=govdelivery.

²⁰³ *Id.*

This is another act that President Obama often brings up when discussing food policy. While the exemptions might be seen as a way to remove barriers for the small farmer, the FSMA's focus is consumer protection. The Tester-Hagan Amendment exemptions reflect a recognition of the segment of farmers who sell to direct markets, and the change of heart by the FDA reflects a willingness of government officials to listen to the concerns of small farmers, at least regarding regulations.

3. *The Farm Bill of 2014*

a. *Overview*

The Farm Bill continues to be the single most important piece of legislation to address agriculture and food policy at the national level.²⁰⁴ The inclusion of local and regional food systems in the farm bill would, therefore, be the greatest acknowledgment of the local food movement at the federal level. After two years of operating without a bill, passing a farm bill became a top priority for Obama in 2014.²⁰⁵ The 2014 Farm Bill was signed into law February 7, 2014.²⁰⁶

The first farm bill passed during the Great Depression in 1933.²⁰⁷ In an effort to provide economic stability to major commodity crops and to preserve family farms, the bill controlled the production of commodity crops and provided income support to farmers.²⁰⁸ Congress is charged with reauthorizing the bill, which is administered by the USDA, about every five years and making changes and adjustments as needed.²⁰⁹ Over time, additional provisions have been

²⁰⁴ See generally Jerome Nathaniel, *Farm Bill 2013: An Inside Look at the Most Important Bill You've Never Heard Of*, MIC (Oct. 29, 2013), <http://www.mic.com/articles/70309/farm-bill-2013-an-inside-look-at-the-most-important-bill-you-ve-never-heard-of>.

²⁰⁵ In October 2013, Obama identified reforming immigration, resolving the budget, and passing a farm bill as three priorities for 2014. Charles Abbott & Leslie Gevirtz, *Obama Says New U.S. Farm Bill is Near-Term Priority*, REUTERS (Oct. 17, 2013, 5:44 PM), <http://www.reuters.com/article/2013/10/17/us-usa-agriculture-obama-idUSBRE99G1DT20131017>.

²⁰⁶ Michael D. Shear, *In Signing Farm Bill, Obama Extols Rural Growth*, N.Y. TIMES (Feb. 7, 2014), <http://www.nytimes.com/2014/02/08/us/politics/farm-bill.html>.

²⁰⁷ *Sustainable Farm Bill*, *supra* note 7, at 10,494.

²⁰⁸ Erin Morrow, *Agri-Environmentalism: A Farm Bill for 2007*, 38 TEX. TECH L. REV. 345, 350 (2006); see also *Sustainable Farm Bill*, *supra* note 7, at 10,494.

²⁰⁹ See RENÉE JOHNSON & JIM MONKE, CONG. RESEARCH SERV., WHAT IS THE FARM BILL? 1 (2014), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS22131.pdf>. "There have been 17 farm bills since the 1930s (2014, 2008, 2002, 1996, 1990, 1985, 1981, 1977, 1973, 1970, 1965, 1956, 1954, 1949, 1948, 1938, and 1933).

added to the farm bill such that there are now provisions to address nutrition assistance, conservation, horticulture, and bioenergy programs.²¹⁰ Subsidies for farmers who grow specialty crops (i.e., fresh fruits, vegetables, and nuts) were first introduced in the 2002 Farm Bill.²¹¹

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), the precursor to the 2014 Farm Bill, contained fifteen titles addressing topics including commodity price and income supports, farm credit, trade, agricultural conservation, research, rural development, energy, and foreign and domestic food programs.²¹² The 2008 Farm Bill, which was enacted over President Bush's veto²¹³ and just prior to President Obama's election, included new and renewed agricultural subsidies for farmers; new nutrition programs including increased funding for states to provide specialty crops; new initiatives to help beginning and socially disadvantaged farmers and ranchers; new programs and funding for organic crops; and increased funding for food stamps, research grants, and the production of renewable fuel sources.²¹⁴ The 2008 Farm Bill acknowledged the rise of new agrarians and support for local food programs, and it provided support for sustainable agriculture through a number of grants and programs.²¹⁵ It was also the first piece of federal legislation to include a definition of local food.²¹⁶

Many provisions of the 2008 Farm Bill expired in 2012, but were extended for an additional year in the American Taxpayer Relief Act of 2012 (the "fiscal cliff bill").²¹⁷ However, the extension of the 2008

Farm bills have become increasingly omnibus in nature since 1973 with the inclusion of a nutrition title." *Id.* at n.1.

²¹⁰ *Id.* at 1.

²¹¹ Wiley, *supra* note 4, at 78. "Although the 2002 Farm Bill enhanced subsidies for crops that advocates point to as contributing to unhealthy eating, it also instituted new subsidies for 'specialty crops,' including fruits and vegetables." *Id.*

²¹² Food, Conservation, and Energy Act of 2008, H.R. 6124, 110th Cong. (2008).

²¹³ Jonathan Weisman & Dan Morgan, *House Overrides Veto of Farm Bill*, WASH. POST (May 22, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/21/AR2008052101313.html>.

²¹⁴ Lindsay Voirin, *Federal Law and Legislation*, 24 J. LAND USE & ENVTL. L. 159, 175–76 (2008).

²¹⁵ See Neil D. Hamilton, *Farms, Food, and the Future: Legal Issues and Fifteen Years of the "New Agriculture"*, 26 J. ENVTL. L. & LITIG. 1, 5 (2011) (noting that the 2008 Farm Bill took several important steps to address "new farmers").

²¹⁶ 7 U.S.C. § 1932(g)(9)(A)(i) (2012).

²¹⁷ JIM MONKE ET AL., CONG. RESEARCH SERV., EXPIRATION AND EXTENSION OF THE 2008 FARM BILL 1 (2013), available at <http://fas.org/sgp/crs/misc/R42442.pdf>. For example, the nutritional assistance programs are discretionary and therefore require

Farm Bill to 2013 did not provide any additional mandatory funding for thirty-seven programs in the 2008 bill.²¹⁸

Discussions about renewing the 2008 Farm Bill began in late 2011.²¹⁹ USDA Secretary Vilsack identified three principles for protection and advancement as Congress worked on this piece of legislation: maintaining a strong safety net, supporting sustainable productivity, and promoting vibrant markets.²²⁰ No farm bill was passed in 2012, and 2013 Farm Bill discussions dragged on throughout the summer and into the fall.²²¹ Frustration brewed, demonstrated by Secretary Vilsack's comment: "don't care who gets the credit for this. I just want a damn farm bill."²²²

In late fall 2013, the House and Senate passed different versions of the bill and sent the bills to the conference committee to resolve the differences.²²³ While many provisions of the House and Senate versions were similar, they differed greatly when it came to spending on the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps.²²⁴ "[The] House proposal would cut about \$40 billion from the program, while a Senate version would trim roughly \$4.5 billion, mainly by making administrative changes."²²⁵ A vote on the farm bill finally occurred in January 2014.²²⁶

reauthorization, while crop insurance is mandatory and is permanently authorized. *Id.* at 1–3.

²¹⁸ See *The Fate of the 37 Expired Baseline Programs*, NAT'L FARMERS UNION (Jan. 1, 2012), <http://nfu.org/component/content/article/1245>.

²¹⁹ See Mark Bittman, *The Secret Farm Bill*, N.Y. TIMES (Nov. 8, 2011), http://opinionator.blogs.nytimes.com/2011/11/08/the-secret-farm-bill/?_php=true&_type=blogs&_r=0 (describing the different positions on the farm bill in 2011).

²²⁰ Tom Vilsack, *infra* note 263.

²²¹ See Charles Abbott, *Food Stamp Debate Holds Up Farm Bill*, REUTERS (Oct. 12, 2013), available at <http://www.csmonitor.com/Business/Latest-News-Wires/2013/1012/Food-stamp-debate-holds-up-farm-bill> (describing how the debate over funding food stamps delayed passage of the bill).

²²² Jeannie Nuss, *Agriculture Secretary Urges Passage of Farm Bill Now*, CAPITAL PRESS (Oct. 31, 2013, 9:03 AM), <http://www.capitalpress.com/article/20131031/ARTICLE/131039983>.

²²³ Kate Fitzgerald, *Farm Bill 2013: A Mixed Bag*, FAIR FOOD NETWORK (May 22, 2013, 1:30 PM), <http://fairfoodnetwork.org/connect/blog/farm-bill-2013-mixed-bag>.

²²⁴ *Id.*

²²⁵ Ron Nixon, *No Farm Bill in Sight as Recess Looms for Congress*, N.Y. TIMES (Dec. 11, 2013), <http://www.nytimes.com/2013/12/12/us/politics/no-farm-bill-in-sight-as-recess-looms-for-congress.html>.

²²⁶ *Cf. id.*

b. Farmer Response

Fifty-one farmers responded to the question on the proposed 2013 Farm Bill.²²⁷ Sixteen farmers (31%) disapproved, and sixteen farmers (31%) strongly disapproved of the bill. Ten farmers (19.6%) had a neutral opinion of the farm bill, and one farmer (2%) approved of the farm bill. Eight farmers (15.7%) responded that they were not familiar with the bill.

The narrative responses also reflected general disapproval of the farm bill. One farmer noted that the farm bill is “completely complicated and maintains subsidies for farms that grow non-food crops.” Another responded that the “farm bill is ridiculous. It has very little impact on us since we are small and get no subsidies.” Another noted disapproval because of the “lessening [of] food stamps/benefits.”

c. Assessment

The 2014 Farm Bill reflects compromise on both sides. Much to the displeasure of some Democrats, the SNAP program was cut by \$8 billion over ten years, but at the same time there was a \$5 billion cut in direct payments farmers received whether they grew crops or not.²²⁸ The 2014 Farm Bill was built on many provisions from the 2002 and 2008 bills addressing locally and regionally produced food, which shows a shift in priorities and recognition of increased consumer demand.²²⁹ Many provisions of the Local Farms, Food, and Jobs Act made their way into the 2014 Farm Bill.²³⁰ And funding for grants supporting local food was significantly greater than the 2008 Farm Bill.²³¹ The Farmers Market Promotion Program was renamed to the Farmers Market and Local Food Promotion Program, and funding significantly increased from \$33 million over five years in the 2008 Farm Bill to \$150 million over five years in the 2014 Farm

²²⁷ The survey was sent out during the summer and fall of 2013; therefore, farmers' responses are to the proposed farm bill in 2013 rather than the enacted 2014 Farm Bill.

²²⁸ Ron Nixon, *Senate Passes Long-Stalled Farm Bill, With Clear Winners and Losers*, N.Y. TIMES (Feb. 4, 2014), http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?_r=0.

²²⁹ *2014 Farm Bill Drilldown: Local and Regional Food Systems, Healthy Food Access, and Rural Development*, NAT'L SUSTAINABLE AGRIC. COAL. (Feb. 11, 2014), <http://sustainableagriculture.net/blog/2014-farmbill-local-rd-organic/> [hereinafter *2014 Farm Bill Drilldown*].

²³⁰ *Id.*

²³¹ *Id.*

Bill.²³² The program was also expanded to provide “grants to farm-to-institution [programs], food hubs, and other local and regional food enterprises that process, distribute, aggregate, or store locally or regionally produced food products.”²³³ The Specialty Crop Block Grant program also received increased funding.²³⁴

The 2014 Farm Bill has been considered a victory for specialty crops.²³⁵ United Fresh, a produce association, noted that the bill “includes an overall increase in investment of 55 percent over 2008 Farm Bill funding levels in critical produce industry initiatives and programs.”²³⁶ It also includes provisions to make it easier to use SNAP benefits with direct markets, such as CSAs and farmers markets.²³⁷ Although the bill was endorsed by the National Sustainable Agriculture Coalition, it was still considered a mixed bag.²³⁸ While the full effect of the 2014 Farm Bill has yet to be seen, the most recent bill represents continued, if not improved, recognition of specialty crops, local food and direct markets, and new farmers.

4. Marker Bills

a. Overview

One recent marker bill proposed changes to several programs in the farm bill to enhance support for local and regional food production and farming systems. The Local Farms, Food, and Jobs Act of 2011, sponsored by Senator Sherrod Brown of Ohio and Representative Chellie Pingree of Maine,²³⁹ had the express purpose of promoting

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *United Fresh: Farm Bill Victory for Specialty Crops*, FRESH FRUIT PORTAL (Feb. 7, 2014), <http://www.freshfruitportal.com/2014/02/07/united-fresh-farm-bill-victory-for-specialty-crops/?country=others>. The senior vice president of public policy for United Fresh, a produce industry association, noted that most of the programs related to their constituency “either increased or remained the same.” *Id.*

²³⁶ Press Release, United Fresh, Farm Bill Contains Major Advances for Fresh Produce Industry (Jan. 28, 2014), available at http://www.unitedfresh.org/assets/NR_United%20Statement%20Farm%20Bill%2020140128.pdf.

²³⁷ *2014 Farm Bill Drilldown*, *supra* note 229.

²³⁸ *2014 Farm Bill Drill Down: Recap and Wrap Up*, NAT’L SUSTAINABLE AGRIC. COAL. (Feb. 14, 2014), <http://sustainableagriculture.net/blog/2014-fb-drill-down-wrap-up/>.

²³⁹ The legislation was first introduced on November 1, 2011, as H.R. 3286/S. 1773, 112th Cong. (2011), and it was reintroduced as H.R. 1414/S. 679 on April 9, 2013. *H.R. 3286 (112th): Local Farms, Food, and Jobs Act of 2011*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/112/hr3286#summary> (last visited Aug. 9, 2014); *S. 1773 (112th): Local Farms, Food, and Jobs Act of 2011*, GOVTRACK.US, <https://www.govtrack>

local and regional farm and food systems. According to the Congressional Research Service, the bill includes “locally or regionally produced agricultural food product” under farm bill provisions on rural development, agricultural research, crop insurance, and nutrition programs.²⁴⁰ In addition, the bill provides funding for several programs that lost funding in 2012 when the 2008 Farm Bill was extended including Local and Regional Food Aid Procurement Projects and Value-Added Producer Grants.²⁴¹

According to its sponsors, the act takes on four major tasks: “boost[ing] income and opportunities for farmers and ranchers; improv[ing] local and regional food system infrastructure; expand[ing] access to healthy foods for consumers; [and] enhanc[ing] agriculture research and extension.”²⁴² The act would ensure that various agencies have systems in place to serve local farmers and to develop a “‘whole farm diversified risk management insurance plan’ to serve diversified producers who do not currently have access to revenue insurance.”²⁴³ The food system infrastructure could be improved by authorizing funding for local and regional food system projects through grant programs²⁴⁴ and increasing the Farmers Market Promotion Program’s mandatory funding.²⁴⁵ Some examples of expanding access include allowing SNAP benefits to be redeemed at CSAs and funding the Senior Farmers Market Nutrition Program.²⁴⁶ Agricultural research and extension programs could be enhanced by establishing a national program within the Agricultural

.us/congress/bills/112/s1773 (last visited Aug. 9, 2014); *H.R.1414–Local Farms, Food, and Jobs Act of 2013*, OPEN CONG., <http://www.opencongress.org/bill/hr1414-113/show> (last visited Aug. 22, 2014); *S.679–Local Farms, Food, and Jobs Act of 2013*, OPEN CONG., <http://www.opencongress.org/bill/s679-113/show> (last visited Aug. 22, 2014).

²⁴⁰ RENÉE JOHNSON ET AL., CONG. RESEARCH SERV., *THE ROLE OF LOCAL FOOD SYSTEMS IN US FARM POLICY 20* (2012), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097249>.

²⁴¹ *Local Foods Bill Will Provide Healthy Food and Create Jobs*, ECOWATCH (Apr. 10, 2013, 10:30 AM), <http://ecowatch.com/2013/04/10/local-foods-bill-provide-healthy-food-create-jobs/>; *The Fate of the 37 Expired Baseline Programs*, *supra* note 218.

²⁴² Condra, *supra* note 2, at 311.

²⁴³ *Local Farms, Food and Jobs Act: What the Bill Does*, PINGREE.HOUSE.GOV, <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does> (last visited Aug. 9, 2014) [hereinafter *Local Farms*].

²⁴⁴ *See id.*

²⁴⁵ *See* Megan Galey & A. Bryan Endres, *Locating the Boundaries of Sustainable Agriculture*, 17 NEXUS J.L. & PUB. POL’Y 3, 21 (2012).

²⁴⁶ *Local Farms*, *supra* note 243.

and Food Research Initiative for local and regional farm and food systems research.²⁴⁷

Another recent marker bill focused on making it easier for young people, or new people who have never done it before, to start farming. The Beginning Farmer and Rancher Opportunity Act was first introduced by Senator Tom Harkin of Iowa, Representative Tim Walz of Minnesota, and several co-sponsors in 2011 as H.R. 3236/S. 1850, and it was reintroduced in 2013.²⁴⁸ Specifically, the bill would expand opportunities for beginning farmers and ranchers through changes to several USDA programs covering conservation; rural development; research, education, and extension; and farm credit and crop insurance.²⁴⁹

The bill represented a “‘strategic collaboration’ by various advocacy groups to introduce ‘a national strategy for addressing [existing obstacles to entry into farming by] focusing on the issues that consistently rank as the greatest challenges for beginning producers.’”²⁵⁰ The legislation included a variety of forms of new farmer assistance, including proposed modifications to guaranteed direct financing programs and conservation programs,²⁵¹ making it easier for “beginning farmers interested in obtaining credit to invest in farm equipment and farmland.”²⁵²

b. Farmer Response

All but one farmer responded to questions about the two marker bills. The majority of farmers had not heard about either bill. Thirty-four farmers (61.8%) had not heard about the Local Food, Farm, and Jobs Act, and twenty-six farmers (47.7%) had not heard about the Beginning Farmer and Rancher Opportunity Act. Of those farmers

²⁴⁷ *Id.*

²⁴⁸ For a summary of the 2011 and 2013 versions, see *Beginning Farmer and Rancher Opportunity Act of 2011 (H.R.3236, S.1850)*, SUSTAINABLE AGRIC., <http://sustainableagriculture.net/wp-content/uploads/2011/11/Brief-Summary-of-Beginning-Farmer-and-Rancher-Opportunity-Act-of-2011.pdf> (last visited Aug. 27, 2014) [hereinafter *Beginning Farmer*]; Press Release, Tom Harkin, *Legislation Aims to Support Next Generation of Farmers* (Apr. 25, 2013), available at <https://www.harkin.senate.gov/press/release.cfm?i=341545> [hereinafter *Legislation Aims to Support*].

²⁴⁹ *Beginning Farmer*, *supra* note 248.

²⁵⁰ Alecia Meuleners, *Finding Fields: Opportunities to Facilitate and Incentivize the Transfer of Agricultural Property to New and Beginning Farmers*, 18 DRAKE J. AGRIC. L. 211, 229 (2013).

²⁵¹ See *Legislation Aims to Support*, *supra* note 248.

²⁵² Tyler Slack, *Bridging the Gap: Farm Transition Challenges Facing Elder Farmers and the Need for a Nationwide Farm-On Program*, 20 ELDER L.J. 485, 487–88 (2013).

who had heard of the bills, ten farmers (18.18%) approved of LFFJA, and twelve farmers (21.8%) approved of the BFROA. Five farmers (9.1%) strongly approved of LFFJA, and four farmers (7.4%) strongly approved of BFROA. Two farmers (3.2%) were neutral on the LFFJA, and eight farmers (12.5%) were neutral on BFROA. Three farmers (5.4%) disapproved of the LFFJA, and three farmers (5.5%) disapproved of the BFROA. One farmer strongly disapproved of the LFFJA, and two farmers (3.6%) strongly disapproved of the BFROA. There were four written responses to the question on BFROA and no written response to LFFJA. One farmer noted that BFROA “sounded promising,” another noted it was “hard to tell,” and a third was “curious to see how it will play out.” A final farmer expressed annoyance between defining a farmer and “large gardener.”

c. Assessment

Both acts received support from sustainable agriculture advocacy groups. For example, the National Farm to School Network support the Local Food, Farm, and Jobs Act.²⁵³ While there is little scholarship, evaluation, or commentary on the Local Food, Farm and Jobs Act or the Beginning Farmer and Rancher Opportunity Act, LFFJA appears to have fared better than BFROA in the final 2014 Farm Bill. For example, the farm bill increased spending on the Farmers Market Promotion Program and made the funding mandatory.

B. The Centrist: Tom Vilsack, Secretary of the Department of Agriculture

1. Overview

The selection of Vilsack in 2008, former governor of Iowa, to head the USDA was initially met with resistance from the sustainable agriculture world.²⁵⁴ Although Vilsack had a reputation of being a “friend” to corporate agriculture and ethanol producers,²⁵⁵ Jerry

²⁵³ *NFSN Endorses the Local Farms, Food and Jobs Act*, NAT'L FARM TO SCH. NETWORK (May 2013), <http://pages.invoc.us/archive/bWVzc2FnZV8yMDU1NjU2XzI2XzEwMjZfMjQzNzI=>.

²⁵⁴ See, e.g., Jane Black, *Vilsack Says USDA Must Serve Eaters as Well as Farmers*, WASH. POST (Feb. 5, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/04/AR2009020403467.html> (noting that Vilsack's nomination meant “agribusiness as usual” to food policy advocates).

²⁵⁵ *Id.* As governor of Iowa, Vilsack promoted ethanol production and agricultural biotech. Martin, *supra* note 85.

DeWitt, director of the Leopold Center for Sustainable Agriculture at Iowa State University, “honestly believe[d] [Vilsack] will listen to a broad sense of voices.”²⁵⁶ Vilsack was also enthusiastically endorsed by Neil D. Hamilton, an advocate for local and regional food systems.²⁵⁷ Seen as a “centrist” who could “balance the demands of farmers, environmentalists, and industry groups,”²⁵⁸ Vilsack gained the support of several national environmental groups, including the Sierra Club, the League of Conservation Voters, and the National Wildlife Federation.²⁵⁹

Early on, Vilsack identified the USDA’s priorities as: combating child hunger and obesity, promoting healthy nutrition, expanding and developing biofuels, and mitigating climate change.²⁶⁰ Yet local food has not been ignored. Throughout his tenure, Vilsack has described local food production and consumption as important and worthwhile. Shortly after his confirmation as Secretary of the Department of Agriculture, Vilsack stated in an interview that “[i]n a perfect world, everything that was sold, everything that was purchased and consumed would be local, so the economy would receive the benefit of that,” but noted that “a very sophisticated distribution system for locally grown food” does not exist.²⁶¹ One way to remedy this issue is to “work on strategies to make that happen. It can be grant programs, loan programs, it can be technical assistance.”²⁶²

When discussions of the 2012 Farm Bill were beginning, Vilsack recommended that Congress look at ways to improve producers’ access to local and regional markets.²⁶³ Vilsack acknowledged the popularity of local food and the importance of “[m]aking connections so that a farmer can sell at a local school or hospital, or even a

²⁵⁶ Ben Block, *U.S. Agriculture Nominee Attracts Controversy*, WORLD WATCH INST., <http://www.worldwatch.org/node/5970> (last visited Aug. 28, 2014).

²⁵⁷ Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 119 (2011).

²⁵⁸ Block, *supra* note 256.

²⁵⁹ *Id.*

²⁶⁰ *Transcript of News Conference with Agriculture Secretary Tom Vilsack*, U.S. DEP’T OF AGRIC. (Jan. 26, 2009), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2009/01/0027.xml>.

²⁶¹ *Tom Vilsack, the New Face of Agriculture*, WASH. POST (Feb. 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/story/2009/02/10/ST2009021002624.html>.

²⁶² *Id.*

²⁶³ Tom Vilsack, Secretary, U.S. Dep’t of Agric., Address at John Deere Des Moines Works (Oct. 24, 2011) [hereinafter Tom Vilsack Address], available at <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0458.xml>.

neighbor down the road.”²⁶⁴ These connections “create[] good-paying jobs in our rural communities and keep[] the wealth created from the ground close to home. Congress should continue the work that was started in 2008 to support our specialty crop producers with improved risk management tools and expanded market promotion.”²⁶⁵

2. Farmer Response

All fifty-six farmers responded to the question on Secretary Vilsack. Most farmers disapproved of Vilsack: sixteen farmers (28.6%) disapproved of Vilsack, and seven farmers (12.5%) strongly disapproved. Twenty-one farmers (37.5%) had a neutral opinion of Vilsack. Only three farmers (5.36%) approved, while no farmers strongly approved of him. Nine farmers (16%) were not familiar with Vilsack. No farmers provided a narrative response to the question about Secretary Vilsack.

3. Assessment

Hamilton has explained that as secretary of the USDA, Vilsack has supported the ideals of a “food democracy,” specifically, the creation of “a more sustainable and just food and farming system in the United States.”²⁶⁶ For example, in an editorial to the *Des Moines Register* in 2010, Vilsack identified six opportunities for growth in rural America. Number three was to “provide locally grown products with local institutions that can use them.”²⁶⁷ More recently, Vilsack highlighted the “development of local and regional food systems” as one of four examples of the “changing landscape that is taking place in rural America.”²⁶⁸

Vilsack has successfully promoted local and regional food systems through the *Know Your Farmer, Know Your Food* initiative.²⁶⁹

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Hamilton, *supra* note 257, at 118–19 (describing many of Vilsack’s initiatives that “gave new life to the ideas of food democracy”).

²⁶⁷ Vilsack *Urges Renewal of Rural America*, AG & FOOD L. BLOG (Feb. 1, 2010), http://www.agandfoodlaw.com/2010/02/vilsack-urges-renewal-of-rural-america.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+agandfoodlaw+%28The+United+States+Agricultural+%26+Food+Law+and+Policy+Blog+-+Home+Page+and+Listserv%29.

²⁶⁸ See Tom Vilsack, Secretary, U.S. Dep’t of Agric., Developments in Federal Agricultural Law and Policy, Address to the Am. Agric. L. Ass’n (Oct. 18, 2012) [hereinafter Tom Vilsack, Developments], 18 DRAKE J. AGRIC. L. 1, 1 (2013).

²⁶⁹ See *infra* Part III.

Vilsack often touts the success of this initiative in “facilitat[ing] direct farmer to consumer sale marketing.”²⁷⁰ When this initiative was criticized by Senate Agriculture Committee members for diverting funds from rural areas to promote “small, hobbyist and organic producers whose customers generally consist of affluent patrons at urban farmers markets,”²⁷¹ Vilsack responded quickly and thoroughly. In a letter, which included a ninety-page attachment, Vilsack emphasized that rural areas will also benefit from the *Know Your Farmer, Know Your Food* initiative, noting that “cultivating these new markets—not replacing old ones—is critical to revitalizing rural America by preserving wealth, increasing farm income, and reminding us all of the hard work and values that sustain those communities and our Nation.”²⁷²

Vilsack has also successfully promoted nutrition.²⁷³ Vilsack established rules for healthier school lunches as part of the Healthy, Hunger-Free Kids Act of 2010. The rules, which went into effect July 1, 2012, require schools to serve meals that are lower in calories, free from trans-fat, lower in sodium, include more fruits, vegetables, and whole grains, and include milk that is reduced or fat-free.²⁷⁴ For the past four years, Vilsack has found himself in the top ten of America’s “50 Most Powerful People in Food.”²⁷⁵ In 2014, he earned the top spot.²⁷⁶

²⁷⁰ Tom Vilsack, Developments, *supra* note 268, at 9.

²⁷¹ Brasher, *supra* note 107.

²⁷² *Id.*

²⁷³ Tom Vilsack Address, *supra* note 263 (noting that the three core principles of agriculture should include “maintain[ing] a strong safety net . . . support[ing] sustainable productivity, and . . . promot[ing] vibrant markets”).

²⁷⁴ Phil Lempert, *First Lady and Agriculture Secretary Vilsack “Do Lunch” Right!*, HUFFINGTON POST (Jan. 25, 2012, 12:47 PM), http://www.huffingtonpost.com/phil-lempert/first-lady-and-agricultur_b_1231260.html.

²⁷⁵ See Colman Andrews, *America’s 50 Most Powerful People in Food for 2011*, DAILY MEAL (Jan. 12, 2011), <http://www.thedailymeal.com/50-most-powerful-food-folk-america-for-2011>.

²⁷⁶ Colman Andrews, *America’s 50 Most Powerful People in Food for 2014 (Slideshow)*, DAILY MEAL (Jan. 21, 2014), <http://www.thedailymeal.com/americas-50-most-powerful-people-food-2014-slideshow>. *Daily Meal* editors note that “[o]ur ultimate criterion [for the list] was simply this: Is each person on our list capable, whether by dint of corporate station, media access, moral authority, or sheer personality, of substantially changing, improving, and/or degrading the quality and variety of the American diet or the way we think about it?” *Id.* at Full Story.

C. Agency Initiatives and Grants: Growing Regional and Local Food Systems

1. New Farmers

Until the enactment of the 2014 Farm Bill, no new funding had been allocated to local food through USDA programs during Obama's presidency, but greater attention to promoting local food has occurred. For example, the *Know Your Farmer, Know Your Food* initiative highlights the benefits of healthy local food systems, but the program has no new budget.²⁷⁷ Apart from KYF and the Seasonal High Tunnel Pilot Program, the grants and programs which were included in the survey were authorized by earlier farm bills.²⁷⁸

2. Know Your Farmer, Know Your Food

a. Overview

The USDA's *Know Your Farmer, Know Your Food* campaign launched in 2009 in an effort to "develop local and regional food systems and spur economic opportunity."²⁷⁹ This initiative does not have its own budget, but instead is an effort to support local and regional food systems by highlighting and promoting existing efforts, funding programs using existing grants, and reducing barriers between USDA programs, offices, and staff.²⁸⁰ For example, the USDA's website "lists over two dozen programs at USDA that can help build local and regional food systems."²⁸¹ In addition to these programs, the USDA webpage also provides a list of "tools and resources" to "help farmers, ranchers, other businesses, communities, and individuals looking to build or take advantage of local and regional food systems."²⁸² These resources include mapping and

²⁷⁷ KNOW YOUR FARMER, *supra* note 39, at 9–10.

²⁷⁸ Farmers were not surveyed on all possible USDA programs that might benefit local and regional food systems. Instead, farmers were surveyed on those grants that I identified as being particularly attractive to local farmers.

²⁷⁹ Press Release, U.S. Dep't of Agric., USDA Launches 'Know Your Farmer, Know Your Food' Initiative to Connect Consumers with Local Producers to Create New Economic Opportunities for Communities (Sept. 15, 2009).

²⁸⁰ See generally KNOW YOUR FARMER, *supra* note 39.

²⁸¹ *Grants, Loans, & Support*, U.S. DEP'T OF AGRIC., http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_GRANTS (last modified June 28, 2013) [hereinafter *Grants*].

²⁸² *Tools and Resources*, U.S. DEP'T OF AGRIC., http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_RESOURCES (last modified Apr. 30, 2014).

financing tools, as well as publications and presentations on farmers markets, food hubs, and farming practices.²⁸³

b. Farmer Response

Fifty-five of fifty-six farmers responded to the survey question on the *Know Your Farmer, Know Your Food* initiative. Twenty-two farmers (40%) approved of this initiative, and another four farmers (7.4%) strongly approved of this initiative. Six farmers (10.9%) had a neutral opinion, five farmers (9%) disapproved, and one farmer (1.8%) strongly disapproved. Interestingly, seventeen farmers (30.9%) had not heard of this initiative.

The narrative comments were somewhat critical. One farmer noted that the USDA did not “need to be involved in marketing,” while another noted that the USDA is “not trustworthy.” Another remarked that the program was “pretty well hidden from public view.”

c. Assessment

Know Your Farmer, Know Your Food is often described as a successful effort to promote local food production and policies.²⁸⁴ Vilsack credits this program with the success of the local food industry.²⁸⁵ A management and communication effort, the *Know Your Farmer, Know Your Food* initiative has worked to organize information on local foods into accessible form.²⁸⁶ One such form is the KYF Compass, a map that identifies USDA grants to support local farming—infrastructure that could assist local business and food producers—and it highlights the numerous federal agencies involved in local food production.²⁸⁷ For example, the USDA coordinates with the U.S. Department of Housing and Urban Development, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency to administer Sustainable Community Planning Grants, which could support developing local food infrastructure.²⁸⁸ Other examples

²⁸³ *Id.*

²⁸⁴ KNOW YOUR FARMER, *supra* note 39, at 77 (noting that “KYF has advanced USDA’s understanding of and support for local and regional food efforts in important ways”). Kathleen Merrigan, former USDA Deputy Secretary was instrumental in creating, implementing, and administering KYF. *Id.* Unfortunately, I did not have space in my survey to ask farmers about her.

²⁸⁵ See Tom Vilsack, Developments, *supra* note 268, at 9 (noting that local food is now a billion dollar industry).

²⁸⁶ See KNOW YOUR FARMER, *supra* note 39, at 6.

²⁸⁷ *Id.* at 72.

²⁸⁸ *Id.* at 75.

of KYF success include: a growth in the number of farmers markets and food hubs, the increase in the number of local food policy councils, and the implementation of agricultural branding programs like “Jersey Fresh” or “Simply Kansas” in all fifty states.²⁸⁹

3. Grants

One goal of KYF is to identify programs available to support local food efforts.²⁹⁰ There are more than eighteen agencies within the USDA to help administer the USDA's goals and objectives.²⁹¹ These various USDA agencies administer more than twenty-four grants to “help build local and regional food systems.”²⁹² I have identified five grants that I thought farmers would have heard of or used, and I provided an “other” option for grants I had not listed.

Specialty Crop Block Grant Program: USDA agency AMS administers this program; the program was authorized in the Specialty Crops Competitiveness Act of 2004, and the 2008 Farm Bill amended it.²⁹³ Under the program, the USDA provides block grants to state agricultural programs to enhance research, marketing, and promotion of specialty crops.²⁹⁴ The grants can be used “to increase consumption, reduce costs of distribution, address environmental and conservation concerns, and develop ‘buy local’ programs.”²⁹⁵ Funding for the Specialty Crop Block Grant program comes from the USDA's Commodity Credit Corporation (CCC), and it “is therefore mandatory, available without an annual (or discretionary) appropriation.”²⁹⁶ Program funding has gradually increased from \$10 million in 2008²⁹⁷ to \$52 million in 2013.²⁹⁸ This 2013 amount

²⁸⁹ *Our Mission*, U.S. DEP'T OF AGRIC. (Aug. 19, 2013), http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_MISSION.

²⁹⁰ See KNOW YOUR FARMER, *supra* note 39, at 6.

²⁹¹ U.S. DEP'T OF AGRIC., ABOUT USDA—A QUICK REFERENCE GUIDE (2012), available at <http://www.usda.gov/documents/about-usda-quick-reference-guide.pdf>.

²⁹² *Grants*, *supra* note 281; see also KNOW YOUR FARMER, *supra* note 39, at 78 (noting that the “USDA has identified at least 27 USDA grant, loan or loan guarantee programs authorized to support work on local and regional foods and found that stakeholders have been utilizing these resources to significant effect.”).

²⁹³ JOHNSON ET AL., *supra* note 22, at 35.

²⁹⁴ Voirin, *supra* note 214, at 176.

²⁹⁵ *Id.*

²⁹⁶ JOHNSON ET AL., *supra* note 22, at 35.

²⁹⁷ *Id.*

²⁹⁸ Press Release, U.S. Dep't of Agric., USDA Specialty Crop Block Grants Create New Economic Opportunities and Grow Markets in Local Communities (Sept. 24, 2013),

represented fifty-four block grants to the U.S. and its territories that will support 694 initiatives nationwide.²⁹⁹ “More than \$14.3 million will support local and regional food systems.”³⁰⁰ For example, one of the projects receiving funding through the Illinois Department of Agriculture will “[i]ncrease local specialty crop sales at designated grocery stores and farmers markets by implementing the ‘Illinois Where Fresh is. . .’ buy local marketing campaign.”³⁰¹ Another project receiving funding through the Nevada Department of Agriculture involves “[p]artner[ing] with Gardnerville Main Street Program Corporation to establish a community supported educational garden at the Heritage Park Gardens to teach youth and parents about the health benefits of consuming fresh, locally grown produce.”³⁰²

Farmers Market Promotion Program. The Farmer-to-Consumer Direct Marketing Act of 1976 originally authorized this program; farm bills in 2002 and 2008 amended the program.³⁰³ Under the program, the USDA gives grants to expand farmers markets and other direct marketing activities, like “roadside stands, community supported agriculture (CSAs), pick-your-own farms, agritourism, direct sales to schools, and other direct marketing activities.”³⁰⁴ Organizations eligible for the program include “farmer cooperatives, grower associations, nonprofit/public benefit corporations, local governments, economic development corporations, regional farmers market authorities, among others.”³⁰⁵ FMPP grants utilize electronic benefits transfer (EBT) payment methods at direct-market outlets.³⁰⁶ The program also raises “customer awareness of local foods through promotion and outreach; educate[s] farmers and growers in marketing, business planning, and similar topics; increase[s] market awareness through advertising and branding efforts; and purchase[s]

available at <http://usda.gov/wps/portal/usda/usdahome?contentid=2013/09/0187.xml&contentidonly=true>.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ U.S. DEP’T OF AGRIC., FRUIT AND VEGETABLE PROGRAMS: SPECIALTY CROP BLOCK GRANT PROGRAM (2013), *available at* <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5105139>.

³⁰² *Id.*

³⁰³ JOHNSON ET AL., *supra* note 22, at 36.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.* The 2008 Farm Bill “mandated that USDA spend at least ten percent of the program’s budget to support the use of electronic benefits transfer systems at farmers markets.” Galey & Endres, *supra* note 245, at 21.

infrastructure, such as refrigerated trucks.”³⁰⁷ Grants range from \$15,000 to \$100,000.³⁰⁸ Matching funds are not a requirement.³⁰⁹

The 2008 Farm Bill made funding for the FMPP mandatory for the first time.³¹⁰ Funding is through the USDA's Commodity Credit Corporation and was divided in the following manner: \$3 million (FY 2008); \$5 million (FY 2009-10); and \$10 million annually (FY 2011-12).³¹¹ Funding for the Farmers Market Promotion Program lapsed while plans for a new farm bill were being determined.³¹²

Some examples of grants awarded in 2012 include: \$93,778 to Heart of the City Farmers Market in San Francisco, California, to increase access to fresh food by: “1) opening the Market one additional day weekly, 2) increasing outreach to SNAP recipients, 3) purchasing market supplies, and 4) installing signage.”³¹³ Another example is a \$100,000 grant awarded to the City of Davenport, Iowa, “to establish a year round market for local and regional foods at [a local farmers market] by purchasing: 1) refrigerated storage and value added processing and packaging equipment, 2) [building] infrastructure for electronic purchasing, and 3) creating a certified kitchen incubator for educational training and classes for producers and consumers.”³¹⁴

Beginning Farmer and Rancher Development Program: The program was authorized in the 2002 Farm Bill and is administered by the National Institute of Food and Agriculture (NIFA), an agency within the USDA; the program, however, was not fully funded until

³⁰⁷ JOHNSON ET AL., *supra* note 22, at 36.

³⁰⁸ U.S. DEP'T OF AGRIC., FARMERS MARKET PROMOTION PROGRAM ANNOUNCEMENT 2 (2014), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5107561>.

³⁰⁹ *Id.*

³¹⁰ *Farmers Market Promotion Program*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/farmers-market-promotion-program/> (last visited Aug. 10, 2014). “[D]espite its ‘mandatory’ status, the funding level for a given year could be less than the farm bill dictates should the Appropriations Committee decide to raid the farm bill to fund other programs under its jurisdiction.” *Id.*

³¹¹ *Id.*

³¹² See Daniel Z. Brito, *Government Shutdown Leaves Farm Bill Stranded; Local Food Programs That Could Save Taxpayers Billions Remain in Limbo*, UNION OF CONCERNED SCIENTISTS (Oct. 3, 2013), <http://www.ucsusa.org/news/commentary/govt-shutdown-harms-Farm-Bill-0408.html>.

³¹³ *Farmers Market Promotion Program—FY 2012 Awards*, U.S. DEP'T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100605> (last visited Aug. 10, 2014).

³¹⁴ *Id.*

the 2008 Farm Bill.³¹⁵ The program “provides grants to organizations that train, educate, and provide outreach and technical assistance to new and beginning farmers on production, marketing, business management, legal strategies and other topics critical to running a successful operation.”³¹⁶ Grants can be used to support beginning farmers and ranchers through: “[p]roduction and land management strategies that enhance land stewardship; [b]usiness management and decision support strategies that improve financial viability; [m]arketing strategies for increased competitiveness; [and] legal strategies that assist with farm or land acquisition and transfer.”³¹⁷ The maximum amount of the grant is \$250,000 each year for three years, with 25% matching funds.³¹⁸ The 2008 Farm Bill “appropriated \$75 million for FY 2009 to FY 2012 to develop and offer education, training, outreach and mentoring programs to enhance the sustainability of the next generation of farmers.”³¹⁹

As an example of a project funded in 2012, the Greater Lansing Food Bank in Michigan received a grant for three years worth more than \$350,000 to establish Lansing Roots, a beginning farmer training program aimed at “increas[ing] the number of small-scale producers/market growers in the Lansing area” and “improv[ing] economic livelihood of low-income individuals/families through self-employment in farming.”³²⁰ In another example, the Nationalities Service Center in Philadelphia, Pennsylvania, received a grant worth more than \$70,000 to support the Philadelphia Community Farming Collaborative help new and beginning farmers grow local food.³²¹

Rural Business Enterprise or Rural Business Opportunity Grants: These two grants were authorized in the 1996 Farm Bill and

³¹⁵ JOHNSON ET AL., *supra* note 22, at 39.

³¹⁶ *Grants, Loans, and Support: Beginning Farmer and Rancher Development Program (BFRDP)*, U.S. DEP’T OF AGRIC., http://www.usda.gov/wps/portal/usda/usda/home?contentid=kyf_grants_nifa3_content.html (last modified Feb. 20, 2013).

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Grants: Beginning Farmers and Ranchers Development Program (BFRDP)*, U.S. DEP’T OF AGRIC., <http://www.nifa.usda.gov/fo/beginningfarmerandrancher.cfm> (last updated Apr. 23, 2014).

³²⁰ *Lansing Roots: Beginning Farmer Training Program*, U.S. DEP’T OF AGRIC., <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=53220&format=WEBFMT6NT> (last visited Aug. 28, 2014).

³²¹ *Philadelphia Farms: Philadelphia Community Farming Collaborative Develops New and Beginning Farmers to Grow Local Food for Philadelphia*, U.S. DEP’T OF AGRIC., <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=53416&format=WEBFMT6NT> (last visited Aug. 28, 2014).

reauthorized in the 2008 Farm Bill.³²² Both grants are administered by the Rural Business Cooperative Service, an agency within the USDA, and eligible entities include: rural public bodies (such as towns, communities, state agencies, and authorities), rural nonprofit corporations, rural Indian tribes, and cooperatives.³²³ While both programs promote economic growth in rural communities, the RBOG has a specific emphasis on support for collaborative economic planning and development through regional food systems.³²⁴ Funding varies between the two programs. The maximum amount of grant funding for RBOG is \$100,000, and the most recent appropriation was for \$2.25 million.³²⁵ While there is no maximum amount of funding for RBEG, smaller programs receive priority.³²⁶ Typically, grants are between \$10,000 and \$500,000.³²⁷

Seasonal High Tunnel Program: In 2009, the USDA launched a three-year program to study the effectiveness of seasonal high tunnels (also known as hoop houses) in conserving water, reducing pesticide use, maintaining vital soil nutrients, and increasing crop yields.³²⁸ Funds can be received through the Environmental Quality Incentives Program, which was authorized in the 1996 Farm Bill and is administered by the Natural Resources Conservation Service.³²⁹ This is a cost-sharing program, and it supports the installation of seasonal high tunnels that are “unheated greenhouses that can extend a producer’s growing season while conserving resources.”³³⁰ The Seasonal High Tunnel Pilot Program has been very popular. By

³²² JOHNSON ET AL., *supra* note 22, at 44–45.

³²³ *Id.*

³²⁴ *See id.*

³²⁵ *Grants: Rural Business Opportunity Grants (RBOG)*, U.S. DEP’T OF AGRIC., http://www.rurdev.usda.gov/BCP_RBOG.html (last modified June 20, 2014).

³²⁶ *Grants, Loans, and Support: Rural Business Enterprise Grant (RBEG)*, U.S. DEP’T OF AGRIC., http://www.usda.gov/wps/portal/usda/usdahome?contentid=kyf_grants_rd6_content.html (last modified Feb. 20, 2013).

³²⁷ *Business and Cooperative Assistance: Rural Business Enterprise Grants (RBEG) Program*, U.S. DEP’T OF AGRIC., http://www.rurdev.usda.gov/BCP_rbeg.html (last modified Sept. 14, 2011).

³²⁸ Press Release, U.S. Dep’t of Agric., USDA to Launch High Tunnel Pilot Study to Increase Availability of Locally Grown Foods (Dec. 16, 2009), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2009/12/0617.xml>.

³²⁹ *See Environmental Quality Incentives Program*, NAT’L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/conservation-environmental-quality-incentives-program/> (last visited Aug. 11, 2014).

³³⁰ *Environmental Quality Incentives Program (EQIP)*, U.S. DEP’T OF AGRIC., http://www.usda.gov/wps/portal/usda/usdahome?contentid=kyf_grants_nrcs3_content.html (last modified May 9, 2014).

January 2011, more than 2400 hoop house contracts worth more than \$13 million dollars had been signed.³³¹ In 2011, 2035 high tunnels were funded, twenty-three of which were funded through the initiative in the Greater Cleveland area.³³²

4. Farmer Response

Many farmers responded that they receive some funding from the federal government, the most popular being funding as part of the Seasonal High Tunnels Initiative (29.6% or sixteen farmers), the Farmers Market Promotion Program (18.9% or ten farmers), and the Beginning Farmer and Rancher Development Program (11.3% or six farmers). Farmers in the narrative response portion to this question also mentioned receiving loans through the Farm Service Agency (FSA).

5. Assessment

Many of these programs are not targeted to the individual, but instead focus on funding states or local governments, non-profits, and other organizations. Small farmers could benefit if they are associated with an organization receiving funding. However, farmers could also benefit from more individualized programs that provide both funds and technical assistance like the Seasonal High Tunnel Initiative. The USDA recently blogged about a farm in Alaska that benefited from the high tunnel program.³³³ The response to this blog appeared to be positive; a blog commenter, Jessica, wrote that “[t]his is a wonderful technology to lengthen the growing season. I am so glad that this is cost shared with NRCS.”³³⁴

³³¹ See Press Release, U.S. Dep’t of Agric., USDA Provides Update on Seasonal High Tunnel Pilot (Jan. 7, 2011), available at http://www.nrcs.usda.gov/news/releases/2011/high_tunnels_1.7.2011.html.

³³² See *NRCS Initiative Brings Hoop Houses, Fresh Produce, to Cleveland Area*, FARM AND DAIRY (Feb. 22, 2013), <http://www.farmanddairy.com/news/nrcs-initiative-brings-hoop-houses-fresh-produce-to-cleveland-area/47867.html>; *Organic and High Tunnel Deadline Approaching*, NAT’L SUSTAINABLE AGRIC. COAL. (Mar. 9, 2012), <http://sustainableagriculture.net/blog/organic-high-tunnel-deadline/>.

³³³ See generally Dave Ianson, *Alaska Growers Net Many Benefits from Seasonal High Tunnel*, U.S. DEP’T OF AGRIC. BLOG (Dec. 24, 2013, 11:30 AM), <http://blogs.usda.gov/2013/12/24/alaska-growers-net-many-benefits-from-seasonal-high-tunnel/#more-49380>.

³³⁴ *Id.* at Comments.

D. Narrative Responses

Thirty-three farmers provided some sort of narrative to the open-ended question asking for their opinions on federal local food policy. As expected, the narrative responses to President Obama's efforts were negative, positive, and somewhere in-between. For example, one farmer simply responded that "[h]e sucks," while another noted that what has been done is "a good start." Others described specific USDA grants as helpful. One farmer noted that "[o]ur grants through FMPP and the BFRDP have been very helpful to us in getting the word out about our market and supporting our training of new urban farmers, respectively." Two others noted that the Seasonal High Tunnel Initiative was beneficial.

Most farmers had mixed feelings. Many were thankful for the increased publicity in local foods, but were disappointed in the lack of real change in agricultural policies. From the small farmer perspective, it "seems like big agri-business and biotech industry still have such a huge influence on policy," but this same farmer was still "glad that Obama recognizes the importance of small farms." Another farmer noted, "[w]hile the administration seems to have a clear interest in promoting healthy food choices, the Dep[artment] of Ag[riculture] seems to have done little to redirect the nation away from big ag[riculture] to local (smaller) farms, who provide the sort of nutritious food the administration promotes." Still, another farmer was appreciative of "[t]he Obama Administration's public relation activities, which have brought some attention to locally produced, small scale and non-toxic food. . . . But the Obama Administration's real power has worked for the opposite."

Along these same lines, others felt that "blaming or giving credit to Obama for our food system is incorrect." Another viewed "any good or bad in terms of ag[riculture] law is a direct result of Congress, NOT the executive branch of our government."

Despite President Obama's efforts, small farmers continue to note that large industrialized farming practices control and influence policy at the federal level. One farmer stated that "[t]he tiny fraction of the budget that goes to know your farmer, local food initiatives, etc. is just a smoke screen to hide the fact that 90 plus percent of our food is controlled by a handful of giant corporations." Another farmer expressed that "[t]he US government's financial might is devoted to maintaining existing pockets of wealth and power, protecting very

large agribusiness and migrating food production toward monoculture, genetic modification and corporate control.”

One farmer simply responded, “Monsanto owns the government. Obama’s polices are designed by big-ag corporations.”

Another theme that emerged from the surveys was that the federal government just does not understand what it takes to be a small farmer. One farmer expressed the opinion that “[f]armers should have someone dedicated to physically going out and finding out what farmers need and actively help them get it. Obama should actually visit a working farm. We have [no] other job, farming is what we do and how we live.” And when the federal government does become involved it tends to harm rather than help the small farmer according to the surveys. One farmer wrote that small farmers “should be exempt from regulations.” Another remarked, “[I]leave the farmer alone and let him do his job. Ease up on all the regulations and mandates and make it easier for him/her to earn a living.”

Along these same lines, farmers wrote that the federal government is “irrelevant” because so many of the policies do not apply to them: “We’re happy when the government helps support local food, small farmers, farmer’s markets, etc., but we run our business in the free market and it’s working fine. My main opinion of government programs is that most of them should be eliminated.” Another farmer commented, “I believe that most of these programs only apply to large farms and don’t trickle down to us small farm folks.”

Others lamented that there just was not enough time to keep apprised of all the federal programs and requirements: “Federal programs rarely filter down to benefit small farms. If they do, the regulations and [paperwork] are too overwhelming for me to get involved.” Another noted that “[i]t was difficult to keep up with everything. I feel that there is certainly more support given towards large industrial style farms than small farms.” Still another farmer noted that “[t]o participate you must have a great deal of time to apply, and then time to fill out lots of [paperwork].”

Surprisingly, many farmers responded that they were not familiar with an act, program, or person that I referred to in the survey. One farmer found the survey “[a] real eye opener . . . that stuff is being done to help the small, struggling famers working with the land and NONE of it is getting down to us—all we hear about is big business farming and subsidies for super farms. This info is not getting to the local Farmers Markets and the people it’s supposed to help.”

Rather than reflecting a lack of information on the issues, these responses could be a reflection of how time-intensive the farming profession is and how little time is left for farmers to become informed about available programs. One tired farmer stated that “farming is 24/7 barely time for family, so tired at the end of the day that to spend energy on finding things we need is a case by case basis.” More so than any profession, farming is a year-round, sunup to sundown job.

*E. Other*³³⁵

There are three other acts that warrant inclusion in the discussion on Obama's local food legacy: the White House Rural Council, the Healthy Food Financing Initiative, and Michelle Obama's *Let's Move!* campaign.

During the course of his second presidential campaign, President Obama signed an executive order establishing the White House Rural Council.³³⁶ Agriculture was the starting point of the Council, and the secretary of the USDA serves as chair of the council.³³⁷ Although the focus of the Rural Council is varied, ranging from improving access to health care and education to promoting innovation, the creation of the council further underscores that President Obama understands the importance of a strong rural economy, based partly on agriculture.³³⁸

Created in 2009, the Healthy Food Financing Initiative (HFFI) is managed by the U.S. Department of the Treasury's Community Development Financial Institutions (CDFI) Fund, the U.S. Department of Agriculture, and the U.S. Department of Health and Human Services (HHS).³³⁹ HFFI represents the federal government's first coordinated step to expand access to healthy, fresh food in underserved communities.³⁴⁰ The initiative provides loans and grants to help fresh food retailers overcome the higher initial barriers to entry into underserved, low-income, urban, and rural communities and to support renovation and expansion of existing stores so they can

³³⁵ Local farmers were not surveyed on these programs and initiatives.

³³⁶ *Executive Order—Establishment of the White House Rural Council*, WHITE HOUSE (June 9, 2011), <http://www.whitehouse.gov/administration/eop/rural-council/executive-order>.

³³⁷ *Id.*

³³⁸ *See id.*

³³⁹ *Healthy Food Financing Funds*, HEALTHY FOOD ACCESS, <http://healthyfoodaccess.org/funding/healthy-food-financing-funds> (last visited Aug. 28, 2014).

³⁴⁰ *See id.*

provide healthy foods for communities.³⁴¹ The goals of this initiative include: eliminating food deserts, reducing childhood obesity, expanding the number of quality jobs in the food sector, spurring livable communities and business growth, and creating new opportunities for agricultural producers.³⁴² This initiative has been so successful that it has been included in the most recent farm bill; the USDA now manages the initiative.³⁴³

HFFI is viewed as “an effective and sustainable vehicle to eliminate a myriad of health, social, and economic deficiencies that plague low-income communities.”³⁴⁴ The HFFI further reflects the Obama Administration’s commitment and efforts to create sustainable local and regional food systems.³⁴⁵ Based on the successful Pennsylvania model, the HFFI “exhibits how connecting producers and consumers can not only provide healthier foods to the community and ignite economic growth, but also create tangible environmental improvements.”³⁴⁶

Finally, a discussion of President Obama’s local food legacy would not be complete without acknowledging the First Lady, her *Let’s Move!* Campaign, and the White House Kitchen Garden. President Obama often refers to the *Let’s Move!* campaign when discussing food policy.³⁴⁷ Launched in February 2010, the *Let’s Move!* campaign is an effort to solve the country’s childhood obesity problem. The four pillars of this program include: empowering parents and caregivers, providing healthy foods in schools, improving access to healthy, affordable foods, and increasing physical

³⁴¹ *See id.*

³⁴² U.S. DEP’T OF AGRIC., HEALTHY FOOD FINANCING INITIATIVE IMPLEMENTATION PLAN 1–2 (2010), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085689>.

³⁴³ *The Healthy Food Financing Initiative (HFFI): An Innovative Public-Private Partnership Sparking Economic Development and Improving Health*, POLICYLINK, <http://www.healthyfoodaccess.org/sites/default/files/updated-hffi-fact-sheet.pdf> (last updated June 3, 2014).

³⁴⁴ *Recent Developments in Environmental Law*, 24 TUL. ENVTL. L.J. 423, 443 (2011).

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Combating youth obesity has emerged as a theme of the *Let’s Move!* campaign. *Learn the Facts, Let’s Move!*, <http://www.letsmove.gov/learn-facts/epIdemic-childhood-obesity> (last visited Jan. 29, 2013). Heeding the advice of public health experts, Michelle Obama’s initiative emphasizes strategies to reduce cost barriers to healthy lifestyles. Sheryl Gay Stolberg, *Childhood Obesity Battle Is Taken Up by First Lady*, N.Y. TIMES, Feb. 10, 2010, at A16.

activity.³⁴⁸ Although promoting locally grown produce is not the focus of this campaign, it does play a role in providing access to healthy, affordable foods.

As a precursor to this campaign, the First Lady planted a vegetable garden at the White House in 2009, the first since Eleanor Roosevelt.³⁴⁹ This act further symbolized and represented the benefits of eating local.³⁵⁰ Although farmers were not directly asked about Michelle Obama, two farmers responded positively to her efforts in the narrative portion of the survey. One farmer noted being “very happy with Michelle Obama’s initiatives for healthy food and activities for children.” Another responded, “Mrs. O seems to be doing more for food awareness among the general public.”

CONCLUSION

RECOGNITION BUT NO REVOLUTION

Evaluating a president’s legacy on any type of policy is challenging, especially when, as is the case here, the president is still in office. Revolutions, like the one Pollan advocates, often occur over several years. An assessment of President Obama’s local food legacy may be premature given that the only farm bill he has ever signed was just enacted. Choosing an evaluative tool by which to measure the president’s legacy is also complicated. In terms of a local food legacy, a more quantifiable approach might look at the increase in the number of farmers markets and food hubs, or the increase in the number of

³⁴⁸ Press Release, White House, First Lady Michelle Obama Launches Let’s Move: America’s Move to Raise a Healthier Generation of Kids (Feb. 9, 2010), available at <http://www.whitehouse.gov/the-press-office/first-lady-michelle-obama-launches-lets-move-americas-move-raise-a-healthier-generation>.

Let’s Move is comprehensive, collaborative, and community-oriented and will include strategies to address the various factors that lead to childhood obesity. It will foster collaboration among the leaders in government, medicine and science, business, education, athletics, community organizations and more. And it will take into account how life is really lived in communities across the country—encouraging, supporting and pursuing solutions that are tailored to children and families facing a wide range of challenges and life circumstances.

Id.

³⁴⁹ Marian Burros, *Obama to Eat Local Produce (Really Local)*, N.Y. TIMES, Mar. 20, 2009, at A1; see also Natasha Metzler, *Michelle Obama Expands the White House Garden*, CHRISTIAN SCI. MONITOR (Apr. 1, 2010), <http://www.csmonitor.com/The-Culture/Gardening/2010/0401/Michelle-Obama-expands-the-White-House-garden>.

³⁵⁰ Jaime Bouvier, *The Symbolic Garden: An Intersection of the Food Movement and the First Amendment*, 65 ME. L. REV. 425, 434 (2013) (describing how the White House Garden “was the result of organized advocacy efforts to raise awareness about local food”).

small farms. Looking at just those factors, local food appears to have flourished under the Obama Administration. The number of farmers markets and food hubs has increased. And the number of small farms is increasing, too.³⁵¹ Whether these effects stem from federal policies, market forces, or social movements, however, is difficult to determine.³⁵²

Because of these challenges, I took a more qualitative approach to evaluating the president's local food legacy. Rather than just relying on an analysis of a single piece of legislation or a single data point, I evaluated those legislative, administrative, and personal decisions made during Obama's presidency that have addressed local food in some way.³⁵³ I also considered local farmers' perceptions of these decisions.³⁵⁴

Through this analysis, it becomes apparent that President Obama has been successful in three ways: expanding the scope of food policy decisions at the federal level to include local food; increasing awareness of the benefits of local food production and consumption; and increasing consumer access to local food.

Before President Obama's election, local food had a limited appearance in agricultural policies and limited to no appearance in economic or health policies. Today, the influences of local food can

³⁵¹ The U.S. Census Bureau noted a slight increase from 2002 to 2007 in the number of farms fewer than 179 acres. See U.S. Census Bureau, *Table 824. Farms—Number and Acreage: 1990 to 2010*, CENSUS.GOV, <http://www.census.gov/compendia/statab/2012/tables/12s0824.pdf> (last visited Aug. 11, 2014); Brad Plumer, *After a 70-Year Drop, Small Farms Make a (Small) Comeback*, WASH. POST, Oct. 2, 2012, <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/02/after-a-70-year-drop-farming-makes-a-small-comeback/> (noting that the number of small farms is increasing while the number of medium-large farms is dwindling); Molly Manns, *Farming for Data: Agriculture in Indiana*, IN CONTEXT (Oct. 2007), <http://www.incontext.indiana.edu/2007/october/5.asp> (noting that the number of farms in Indiana “covering one to 49 acres of land increased 32 percent from 1997 to 2002”).

³⁵² See Stephen Carpenter, *A New Higher Ceiling in Agricultural Law*, 18 *DRAKE J. AGRIC. L.* 13, 22–24 (2013) (“[T]he extent to which new farm and food movements act through the market and not through government policy is notable. . . . The core of [these] new movements, however, is voluntary action in dialectic between farmers, consumers, and those in between.”). As one farmer aptly stated, “[w]e notice more effect on our farm when Martha Stewart or Sunset Magazine publishes an article suggesting people shop at farmers markets than any policies generated from the federal level.” *But see* Tom Vilsack, *Developments*, *supra* note 268, at 8 (explaining a “sixty percent increase in the number of farmers markets in part because of our Know Your Farmer, Know Your Food initiative”).

³⁵³ See generally *The Forgotten Half*, *supra* note 2, at 40; Johnson & Endres, *supra* note 11 (describing exemptions for small farms to recent federal legislation).

³⁵⁴ I use the term “perception” because it seemed that some of the responses did not reflect a complete understanding of the legislation or grant.

be found in all three types of policies and have been written into two pieces of federal legislation addressing child nutrition and food safety.³⁵⁵ Additionally, local food has been highlighted through the *Know Your Farmer, Know Your Food* initiative. Local food discussions transcend the USDA to include the FDA, the U.S. Department of the Treasury, and the U.S. Department of Health and Human Services. Collaborative enterprises like the Healthy Food Financing Initiative reflect the Obama Administration's willingness to expand the discussion of local food beyond agricultural policy where it has traditionally occurred.

And when discussions on local food are expanded, awareness of the importance of local food also grows. The White House garden and Michelle Obama's *Let's Move!* Campaign are perhaps the most significant ways the Obama Administration has increased the public's awareness of the health benefits that result from local food production and consumption. This is closely followed by the *Know Your Farmer, Know Your Food* campaign, which has effectively marketed locally grown products and gathered information for consumers and producers about programs to support local food.

The benefits of local food, however, can only be realized if local food is available. The Obama Administration has also done an admirable job increasing consumer access to local food. For example, an underlying goal of the Healthy, Hunger-Free Kids Act and the Healthy Food Financing Initiative has been to improve access to locally grown products. Many children eat two or three meals each day at school, and the Healthy, Hunger-Free Kids Act offers greater opportunity for these meals to include locally grown produce. Similarly, the HFFI expands access to locally grown produce in underserved communities. The 2014 Farm Bill continues and expands SNAP benefits at farmers markets and CSAs.

Obama has portrayed himself as a president in touch with the local food movement and is comfortable discussing his local food efforts. For example, in response to a 2011 YouTube question about how he was going to reverse the cost of fresh produce as compared to processed food, the president first emphasized the First Lady's work

³⁵⁵ Local food also made its way into Obama's international aid policies when he suggested that the government buy food from local farmers in poor countries instead of buying food from American farmers and shipping it abroad. Ron Nixon, *Obama Administration Seeks to Overhaul International Food Aid*, N.Y. TIMES (Apr. 4, 2013), http://www.nytimes.com/2013/04/05/us/politics/white-house-seeks-to-change-international-food-aid.html?_r=0.

in making healthy eating a priority.³⁵⁶ The president also noted that his administration was encouraging links between local supermarkets and local farmers.³⁵⁷ He explained that this approach is “good for the farmers, good for retail stores in underserved communities, and ultimately it’s good for the consumer.”³⁵⁸ He also mentioned the Healthy, Hunger-Free Kids Act and its effort to get fresh fruit and vegetables into schools.³⁵⁹ “All these things,” he noted, “are geared towards making local produce, fresh produce much more available and cheaper to every family and not just families who can afford to go into high-end supermarkets.”³⁶⁰ Yet increasing awareness and availability is only part of what is needed to achieve a sustainable local food system.

Czarnezki recently wrote that “to change American food consumption, two changes must take place—increased awareness and increased availability.”³⁶¹ This involves law and policies that “increase available information about the consequences of food choices” and “make structural changes in the food system that increase access to sustainable foods.”³⁶² President Obama has made strides in both areas. But even Czarnezki recognizes that “other changes must occur,” and that includes changes to “actual agricultural practices.”³⁶³ And it is here where President Obama and future presidents must focus in order to achieve a revolution. As evidence from the farmers’ survey responses, farmers need more support in educational, financial, and technical ways. Some of these concerns may be addressed through the 2014 Farm Bill. It is encouraging to see many of those grants identified as assisting local farmers, such as the Farmers Market and Local Food Promotion Program receiving full funding in the 2014 Farm Bill. While funding innovative programs is important, the programs must also be implemented in a manner that is meaningful to local farmers. Farmers need to be informed about the grants that are available to them and should be given assistance when applying for them. KYF is a start, but there is more to be done.

³⁵⁶ YouTube World View, *Cost of Nutritious Food - President Obama's YouTube Interview 2011*, YOUTUBE (Jan. 28, 2011), <https://www.youtube.com/watch?v=n9EHbQqy7js>.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ Czarnezki, *supra* note 2, at 278.

³⁶² *Id.* at 278–79.

³⁶³ *Id.* at 278 n.82.

Although President Obama has been criticized for not doing enough to support local food,³⁶⁴ he has certainly not ignored the local food movement. Instead of abandoning his support for industrial agriculture, President Obama's approach has been to push local agriculture as an alternative, be it through small pieces of legislation, the advocacy of the USDA, collaborations between and within agencies, and even through his family and residence. During the signing of the 2014 Farm Bill, President Obama described the bill as one that "supports local food by investing in things like farmers markets and organic agriculture."³⁶⁵ We should applaud the president and his administration's efforts to expand the discussion and increase consumption and access to local food, but also recognize that more can be done to support local food production and the local food producer.

It may be naïve to suggest that the way America has farmed for the past several decades could somehow be reversed by one president, especially at a time when the president has to do more with less. It could be that the stars were not aligned for President Obama to achieve a revolution; or it is possible that the stars are just starting to move.

³⁶⁴ Wenonah Hauter, *Dear Obamas: Let's Move . . . on Food Policy Reform*, GRIST (Feb. 12, 2011, 2:00 AM), <http://grist.org/sustainable-food/2011-02-11-dear-obamas-lets-move-on-food-policy-reform/>. Many farmers were also critical of Obama for his continued relationship with "big ag" players, such as Monsanto.

³⁶⁵ Transcript of Remarks by the President at Signing of the Farm Bill, Michigan State University (Feb. 7, 2014), (transcript *available at* <http://www.whitehouse.gov/photos-and-video/video/2014/02/07/president-obama-speaks-farm-bill-and-economy>).

APPENDIX
FARMER SURVEY

I am writing a paper entitled *The Farmer in Chief: President Obama's Local Food Legacy*. I'm interested in getting local farmers' perspectives on what has happened at the federal level since Obama's election to help local farmers. In the future, I'd like to write a paper on local food policies, but for now, I am focusing on federal policies, initiatives, and administrations.

Farm Type (vegetable, flower, sheep, etc.): _____

Size of Farm: _____

Location of Farm: _____

Number of Years Farming: _____

1. What is your impression of the following federal acts that have passed, failed, or been proposed?
 - a. Healthy, Hunger-Free Kids Act of 2010 (Child Nutrition Act 2010)

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove
 - b. Food Safety and Modernization Act of 2010

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove
 - c. Failed Farm Bill of 2013

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove
 - d. Proposed Beginning Farmer and Rancher Opportunity Act of 2013

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove
 - e. Proposed Local Farms, Food, and Jobs Act of 2013

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove

2. Have you used or taken advantage of the following grants/programs administered by the USDA through the 2008 Farm Bill:
 - a. Rural Business Enterprise or Opportunity Grant
___Yes ___No
If yes, what years? _____
 - b. Specialty Crop Block Grant Program
___Yes ___No
If yes, what years? _____
 - c. Farmers Market Promotion Program
___Yes ___No
If yes, what years? _____
 - d. Beginning Farmer and Rancher Development Program
___Yes ___No
If yes, what years? _____
3. Have you taken advantage of the Seasonal High Tunnel Pilot Program (with NRCS) (funding for hoop houses)?
___Yes ___No
If yes, what years? _____
4. What is your impression of the USDA's Know Your Farmer Know Your Food initiative?
___Strongly Approve ___Approve ___Neutral ___Disapprove
___Strongly Disapprove
5. What is your impression of the following administrator?
 - a. Tom Vilsack (Secretary of the USDA)
___Strongly Approve ___Approve ___Neutral ___Disapprove
___Strongly Disapprove

6. What is your overall impression of President Obama's local food policy?

Strongly Approve Approve Neutral Disapprove
 Strongly Disapprove

Narrative

Feel free to comment on any of the above federal policies, initiatives and administrators as it relates to promoting local food systems.

Thank you for your time!

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